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RESTORING THE 'CANADIAN BRAND' COUNTERING ACTIVIST MISINFORMATION ON CANADIAN MINING ABROAD

BY JOSEPH QUESNEL



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JOSEPH QUESNEL

Joseph Quesnel is a research fellow for the Frontier Centre for Public Policy who mainly focuses on Aboriginal matters and property rights. Presently based in eastern Nova Scotia, he is from northeastern Ontario and has Métis ancestry from Quebec. He graduated from McGill University in 2001, where he majored in political science and history. He specialized in Canadian and U.S. politics, with an emphasis on constitutional law. He also has a Master of Journalism degree from Carleton University, where he specialized in political reporting. His master's research project focused on reformist Indigenous thinkers in Canada. He is currently studying theology at the Atlantic School of Theology in Halifax. In the past while as a policy analyst, he was the lead researcher on the Frontier Centre's flagship Aboriginal Governance Index, which is measured perceptions of quality of governance and services on Prairie First Nations. For over two years, he covered House standing committees as well as Senate committees. Quesnel's career in journalism includes several stints at community newspapers in Northern Ontario, including in Sudbury and Espanola. He also completed a radio broadcasting internship at CFRA 580 AM, a talk radio station in Ottawa, and the well-known Cable Public Affairs Channel (CPAC). He is a past editor of *C2C Journal*, an online Canadian publication devoted to political commentary. He wrote a weekly column for the *Winnipeg Sun* and contributes to *The Taxpayer*, the flagship publication of the Canadian Taxpayers Federation. Quesnel's policy commentaries have appeared all over Canada, including the *Globe and Mail*, the *National Post*, the *Financial Post*, the *Vancouver Sun*, the *Ottawa Citizen*, the *Montreal Gazette*, the *Calgary Herald*, *Winnipeg Free Press*, among many other major papers. Over the years, he has been featured as a guest commentator on many radio and television news programs.



**FRONTIER CENTRE
FOR PUBLIC POLICY**

203-2727 Portage Avenue, Winnipeg, Manitoba Canada R3J 0R2

Tel: 204-957-1567

Email: newideas@fcpp.org

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INTRODUCTION

“Canada is not perfect, but we’re getting better, and it can be argued that Canadians are leading the world in corporate social responsibility (CSR) in this sector.”

- Carlos Miranda, a Trade Commissioner¹ and liaison officer for mining in the Canadian Trade Commissioner Service

Two events occurred in 2019 that had to do with Canadian mining firms operating abroad. In 2019, the new Mexican government of President Andres Manuel Lopez Obrador committed to a more pragmatic and balanced approach towards various extractive industries in that country, including mining.² The government realized that operations that do not respect human rights or worry about social license have led to lost investment opportunities. Mining is a significant part of the Mexican economy and Global Affairs Canada reports that about 70 percent of foreign-owned mining firms in Mexico are based in Canada. So, in developing its standards for engaging in its mining operations moving forward, the Mexican government established new Indigenous consultation protocols and social impact assessment tools. What was Mexico’s source of inspiration? It was guidelines established by the Mining Association of Canada and its *Toward Sustainable Mining* Initiative.

So, in that case, and in many others if one cares to look over the empirical record, foreign governments and organizations look to Canadian examples as best practices and in many cases, the “gold standard” in corporate social responsibility standards when it comes to mining.

Now, another event occurred in 2019 that was important for Canadian mining abroad. On April 9, 2019, the Minister of International Trade Diversification appointed Canada’s first Canadian Ombudsperson for Responsible Enterprise, with a focus on Canada’s mining, oil and gas and garment sectors. The effect, of course, would be to encourage an assumption that these industries are engaging in negative behaviours that needs addressing.

The new Canadian Ombudsperson for Responsible Enterprise is responsible for investigating a few different multinational industries. An ombudsperson with this focus is the first of its kind in the world. However, this kind of drastic action is unique among Canadian industries. This paper will focus solely on the mining part.

The federal government’s actions suggest that Canadian mining firms must be monitored and controlled in a way that they generally do not do for other internationally active companies in, for example, the armaments industry.

However, how did we get to a situation where it was assumed that was a widespread problem with the activities of Canadian mining firms operating abroad?

Now, the problem is that informed Canadians are more likely to know about the ombudsperson office than the example of foreign countries adopting Canadian mining standards.

This paper will look at this issue of how we got from there to here and will look at Canada’s image internationally when it comes to mining operations. It will be argued that this overly negative image of mining is actually contradicted by the empirical record.

WHY IS THIS ISSUE IMPORTANT?

Mining remains one of the most significant industries to the Canadian economy, so how we are perceived internationally matters. While the COVID-19 pandemic affected the mining sector, the sector will play an important role in the post-pandemic economic recovery.

The minerals sector directly and indirectly contributed to five percent or \$97B to Canada's total nominal GDP in 2018.³ The sector directly and indirectly accounts for 630,000 jobs throughout Canada in all regions.⁴

Globally, Canada is a mining powerhouse. Canada ranks among the top five countries in the global production of 15 minerals and metals, many of which are integral to low-carbon technology.⁵

Mineral exports from Canada were valued at \$105B in 2018, making up 19 percent of Canada's total domestic exports.⁶ Canadian-based publicly traded mining companies held \$169B in mining assets overseas in 2017.

Mining also directly impacts other industries and takes advantage of important national infrastructure. For example, mining is the single largest industrial customer group of Canada's railways and is a major user of Canada's ports. Annually, the industry accounts for approximately 50 percent of total rail freight revenue generated and is the largest single shipping sector by volume by both rail and marine modes.⁷

Mining contributes significantly to government revenues in Canada, both in taxation and royalties. According to the Natural Resource Governance Institute,⁸ in 2018, extractive sector companies reported payments of more than \$10.4B to Canadian governments. These payments, to Indigenous, municipal, provincial, and federal governments are generally royalty or tax payments sourced from over 377 companies for more than 1,800 projects across the country.

There are also many products that rely on mining.⁹ Many of our electronic goods and our medicines rely on specific metals and elements. Electric cars are heavily reliant on mining. Disinfectants such as common soap rely on zinc and other metals, which are critical during the COVID-19 epidemic.¹⁰

Finally, mining jobs in Canada are high-paying jobs. The average annual pay for a mining worker in 2018 exceeded \$123,000, which surpassed the average annual earnings of workers in the forestry, manufacturing, finance, and construction sectors respectively.¹¹ These jobs contribute to family income, to resource-dependent communities, and to the regional economy.

In terms of Indigenous reconciliation, it's also critical to mention that, proportionally, the mining industry is also the largest private sector employer of Indigenous peoples, providing over 16,500 jobs.¹²

CANADA'S MINING FOOTPRINT ABROAD

Canada is home to 75 percent of the world's mining firms.¹³ In 2015, Canada's mining assets totaled \$259.1B dollars. \$170.8B of this, or two-thirds, are assets located abroad.¹⁴ These assets are spread across 102 foreign countries in which Canadian mining companies operate.¹⁵ Today, most Canada's mining assets are located abroad, with more than 800 Canadian companies exploring and operating in well over 100 countries.

Most of Canada's operations abroad are in Latin America, with 52 percent (\$88.5B) of our assets in Central and South America as of 2015 (Natural Resources Canada, 2017). These assets come from 1,134 Canadian mining projects that primarily mine gold, silver, and copper. The most significant operations are in Chile, Mexico, and Argentina.¹⁶

Thus, as a particularly important economic stimulant to the Canadian economy, it matters how our mining sector is viewed both at home and especially abroad. This perception would have an impact on mining exploration and investment decisions, as well as affect the decision of a foreign player to enter a joint venture with a Canadian mining company. Therefore, when governments at all levels are crafting legislation and policies to accommodate the mining sector, it must be based on the best available evidence.

Finally, it matters tremendously in this case because Canadian mining is experiencing a downturn. Concealed beneath some good numbers on the Canadian economy overall, capital expenditure on Canadian mining projects has been experiencing a slump. Mining investment peaked in 2012 and then fell from \$16.9B to \$8.1B in 2018.¹⁷ Planned investment in large mining projects has been steadily declined since 2014 to now. Most important for this report, Canada's share of mining projects overseas has declined from 13 percent in 2015 to about seven percent in 2018.¹⁸ Like in the case of Canada's oilsands, mining firms have been on the receiving end of a targeted activist campaign to dissuade investors and partners from putting their money into mining projects that originate in Canada.

WHY EVIDENCE IS IMPORTANT IN CRAFTING GOOD POLICY

Policy makers—in Canada or anywhere—must tailor policy recommendations based upon accurate and factual information. Adopting policy resolutions for a situation that is not what it seems or is presented is a recipe for disaster. Those committed to studying policy as a vocation are also quick to point out that the enemy of good policy is often bad politics, either through a misalignment of motivations or the incentivization of bad policy by the partisan system. However, bad politics can also be created when social movements or NGOs are presenting situations in a misleading way for their own movement-based ends, not the general good or in search of the truth. Unfortunately, ideologically motivated members of the academy can also contribute to this. These kinds of distorted narratives are then picked up by otherwise intelligent journalists and policy commentators. Finally, in a sort of feedback loop, these elite opinions are picked up by those working in government as well as professional politicians who pass legislation. Those politicians may be motivated by their own ends but are also moved by a sense of the public good or interest; unfortunately some are wielding misleading information.

When it comes to many issues regarding the environment in Canada, this often happens. It has had a great detrimental effect on Canada in the case of Alberta's oilsands. However, it has also occurred when one looks at Canada's mining activities abroad.

If one researches Canada's mining activities abroad, they are most likely to come up with negative information. Whether it be over some alleged human rights abuses committed by a company—this has happened but most allegations have never been tested in a fact-finding court—or about some environmental catastrophe that involved a Canadian mining firm.

Now, some Canadian firms abroad *have* acted irresponsibly and recklessly at times, but these firms are by far in the minority of all Canadian firms operating in foreign locations. This paper is not about ignoring the truly horrific cases and "whitewashing" anything. The problem is that activists—both those motivated solely for anti-mining reasons and those with an environmental agenda—have largely succeeded in creating a narrative where the public and including many influential policy makers and opinion leaders think that the small case of bad cases are somehow representative of Canadian mining abroad generally. However, as will be shown later, the empirical case is quite different. It paints a nuanced and quite optimistic picture, albeit a picture that acknowledged the bad apples in the bunch.

Unfortunately nuance, complexity, and optimism are now what certain activist NGOs seem to be aiming for, or desire. Like in the case of the Alberta oilsands, declining carbon emissions and improved environmental indicators do not aid the group's fundraising efforts and even might undermine or threaten the group's *raison d'être*. The incentives are there for the presentation of a bad situation and more appropriately, a worsening situation.

However, this is not simply an academic exercise. This misleading and distorted narrative has real-life impacts. Like the misinformation that has been spread widely by anti-oilsands activists, the information spread about Canadian mining firms abroad is situated within an economic environment in which mining investment both at home and abroad is experiencing a long-term slump and is trending downward.

THE CURRENT LANDSCAPE FOR CANADIAN MINING ABROAD

For those intimately familiar with Canada’s actual record on mining operations abroad—such as the mining companies themselves or civil servants—the record is mixed, but largely positive. Some mining companies have justifiably made the news for bad reasons and one hopes that justice prevails in those cases, but the number of positive stories and examples are quite numerous and go unreported, so unknown to the Canadian public, even among the classes of people that are considered bright and informed.

Unfortunately, most Canadians would probably not know that and those Canadians who do take a passing or active interest in Canadian mining activities are bombarded by negative information from activists who are already predisposed to oppose mining activity.

Instead of promoting these positive stories for Canada, over the last 10 years the government has been fixated on highlighting the limits and drawbacks of corporate social responsibility when it comes to Canadian mining firms. Canadian laws and guidelines were criticized for being voluntary, non-binding and to them, ineffective. However, there is a dearth of data to justify this claim that non-binding standards were a “failure.”

The example of Mexico shows that there is clearly more at work here. Mexico is also not the only other country that has adopted the voluntary *Toward Sustainable Mining* (TSM) initiative standards, a corporate social responsibility program developed by the Mining Association of Canada (MAC). Other countries look to Canada for inspiration and guidance on mining standards in many areas. This past September, Brazil joined six other countries that have adopted the TSM initiative to deal with environmental social issues in the mining sector. Brazil is now the second country in South America to have adopted the standards.

TSM¹⁹ requires mining companies to annually assess their facilities’ performance across eight important areas, including tailings management, Indigenous and community outreach, safety and health, and biodiversity conservation. The largest mining firms represented by MAC must assent to the TSM standards and they form the normative principles for the industry.

Until the creation of the ombudsperson office, Canadian mining companies operating abroad were governed by the Canadian government’s Corporate Social Responsibility Strategy.²⁰ The CSR strategy was completely voluntary and rarely employed. The Counsellor had no power to investigate, no power to require meetings, and no power to report.

However, much of this discussion ignored what mining associations such as MAC and individual mining firms were doing on their own to create social responsibility within their operations abroad. By all indications, self-regulation was working well. However, based on what we were receiving from the activist and academic community in terms of publications, we were hearing the exact opposite message.

ACTIVIST TARRING OF THE CANADIAN MINING BRAND ABROAD

There is a close parallel between the picture created by activists regarding the Canadian mining industry abroad and the Canadian oil sands. Environmental campaigners for the last few decades have attempted to create this misleading narrative that oil sands oil is somehow “dirtier” and more unethical than other sources with a limited interest in the truth and perspective. The United States and many European countries have been fed on a steady campaign of disinformation about the oilsands. This activist-led campaign has led to divestment decisions and companies pulling out from investing in the Oilsands. This campaign of disinformation has achieved results, to the detriment of Canada’s economy and Canadian workers.

If you Google “Canada” and “mining” together, you are greeted with many hits that deal with high-profile allegations of human rights abuses involving Canadian mining firms abroad, particularly in Latin America where most Canadian firms operate. Some of these sensational stories have made it to trial, but this distorts the larger aggregate picture of Canadian mining companies operating abroad who are working closely and productively with local populations with little difficulty. The purpose of this report is not to dismiss or make light of serious allegations involving some mining firms, but to present a more balanced and accurate picture. This study will also not focus on or provide detailed accounts of these high-profile cases as there are more credible places to investigate these claims. Evaluating these allegations will also fall outside the scope of this study.

PRIOR STUDIES ON CANADIAN MINING FIRMS ABROAD

In 2017, a group of Canadian scholars produced a report about Canadian mining activities in Latin America. The report argued that the so-called “Canadian brand” of mining abroad was one of alleged violence and abuse. The report, coordinated by a team led by prominent Canadian legal expert Shin Imai, identified incidents involving 28 companies.²¹

Certain Canadian NGOs and anti-mining activists have run with this narrative and presented this as fact. These kinds of reports, as well as the effects of anti-mining activism throughout the 1990s, informed the federal government’s perspective when it began to move towards specific legislation to address the assumed “problem.”

Moreover, the scholarly community has not been known for its balanced perspective on mining, as well as many other extractive industries. In 2016, two Canadian researchers published the ominously titled *Blood of Extraction: Canadian Imperialism in Latin America*.²² Purporting to present an empirically based analysis of Canadian mining interests in Latin America, the study—although grounded in case studies—was situated within an ideological bias that clouded the analyses. Clearly, Canadians and other interested observers abroad are not being served well at all.

Based on this sort of policy landscape, the federal government would go on to create a new ombudsperson office to investigate mining human rights and other abuses. Also, activists and scholars would both carry forth with this misleading image of the Canadian mining sector abroad. These attitudes would then be picked up by journalists and policy commentators.

AN EMPIRICAL LOOK AT CANADIAN MINING ACTIVITY IN LATIN AMERICA

Unfortunately, the 2017 report mentioned above, as well as many other reports on mining abroad, are not very empirically verified and left out the wider picture. Many of the other “studies” are also heavily tainted by bias and political agendas. They also largely ignored the positive record in voluntary standards coming from the Canadian mining sector. In response to the 2017 study mentioned above, a group of scholars in 2018 took a much closer look²³ at the quantitative evidence of Canadian mining activities in Latin America. In evaluating the policy landscape, they discovered that the information available on Canadian mining firms abroad was not rigorous and ignored empirical evidence. They sought to remedy that.

Their results were published in a much-discussed peer reviewed journal article in the respected *Canadian Journal of Political Science*. They found a much more complicated and nuanced picture and identified where Canadian mining companies are performing well in this region. This study will be a prominent part of this report’s analytical framework.

The growing weight of activist-driven anti-mining literature led some academic researchers to take notice. These researchers from the University of Ottawa and McGill University noticed that “there is a surprising lack of rigorous and generalizable evidence, notwithstanding the significant number of problem cases to which critics can point.”²⁴ To address the matter, the scholars looked at a much larger sample database to evaluate the association between the corporate nationality of mining firms and social conflict. The study drew upon 634 properties in five Latin America countries (Argentina, Brazil, Chile, Mexico, and Peru). The authors focused on the specific question of whether country of origin is correlated with social conflict in communities close to mines and mining projects.

Without excusing, downplaying, or justifying alleged misconduct or human rights abuse allegations, the study authors established at the outset that conflict is part and parcel of any extractive economy, especially in the developing world, where rule of law and policy frameworks are lacking. In forestry and farming, they mentioned, the geographic and environmental disturbances invariably lead to conflicts between various actors. Also, they noted, high-value resources such as oil, diamonds, gems, and timber tend to bring along inter-state violence. Resource endowments often become politicized and subject to nationalistic feelings.

The authors were particularly concerned with the perception that Canadian mining firms are somehow more associated with conflict abroad. Some glaring errors were obvious. They noted one study from the Canadian Centre for the Study of Resource Conflict (CCSRC)²⁵ where it was argued that Canada was more involved in these incidents than their closest mining peer, Australia.

However, the CCSRC study itself found that while 75 percent of mining companies are headquartered in Canada, only 34 percent of conflicts were associated with Canadian firms.²⁶ This suggests, however, on a proportional basis, Canadian firms are *less likely* to be associated with conflict than other nationalities. The authors noted that despite this glaring problem, the study was widely cited as *evidence* against Canada. However, these kinds of amateurish attacks on the Canadian mining industry revealed that the activist literature was not very rigorous or thorough. The critics had failed to account for alternate explanations, or as the study put it:

But observers have generally failed to distinguish between several plausible hypotheses: That factors unrelated to “being Canadian” are associated with social conflict (and therefore the supposed relationship is false); that there could be a lot of

reported conflict with Canadian firms simply because mining is a conflictual industry in which Canadian firms are numerically dominant (that sectoral characteristics are more important than national origin); or that Canadian firms are for some reason more likely to be involved in social conflict (country-of-origin matters).²⁷

The researchers also discovered another fundamental problem with the activist-driven literature and narrative. These activists and scholars tended to view Canadian regulations for mining as “weak” and “permissive,” with few effective mechanisms for mining company accountability. They tended to draw a straight line between “liberal” and “permissive” regulations at home with bad social and environmental behaviour abroad. However, the empirical evidence tells a different story, or as the study authors concluded: “When foreign firms were divided into Canadian and foreign non-Canadian firms, the analysis suggested that Canadian firms were *better* than foreign non-Canadian firms at avoiding known social conflict, and particularly that Canadian firms seem to perform *better* in poorer communities.”²⁸ Or as the authors put it:

Insofar as the literature on Canadian mining firms has lined a regulatory home-country environment that is portrayed as weaker than other source countries, with worse comparative performance of Canadian firms, our findings that Canadian mining companies perform better than non-Canadian foreign firms falsify that line of argumentation. In other words, the analysis presented here casts doubt on the commonly hypothesized relationship between weaker sectoral regulation at home and worse corporate behaviour abroad.²⁹

This finding has policy implications, as it suggests that raising home-country regulatory standards to meet some of the foreign “best practices” cited in the literature is unlikely to be the magic bullet that solves social conflicts.³⁰

Also, in contrast to the activist and academic assumptions, the study was also positive about the effectiveness of developing CSR strategies. It found a positive effect from focusing on these strategies in building norms and most importantly, in actual firm behaviour abroad. Or as the study authors put it: “In other words, the better performance of Canadian mining firms as compared to foreign non-Canadian firms, corresponds to Canadian country-of-origin CSR commitments originating in public debate, government policy, and sectoral association efforts that are also probably superior to other mining source countries.”³¹

Thus, based on these findings, it would suggest that any strategy for addressing misconduct by mining firms should involve a strong CSR component, rather than abandon or downplay it.

CORPORATE SOCIAL RESPONSIBILITY AND ACTIVIST ASSUMPTIONS

In much of the activist and academic literature, there is an assumption that Canada's regulatory regime for mining is weak and permissive, with few effective real mechanisms for corporate accountability.

Canadian law professors Simons and Macklin (2014)³² underwent a thorough analysis of extractive companies operating abroad to question how best to regulate their activity and prevent human rights abuses. They reach the conclusion that the best option is for this industry to be legally regulated by the "home states" of the multinational corporations. Mining executives and firms have always recognized that the countries they are operating in abroad often have a casual and questionable relationship to the rule of law. Also, they understand that sometimes people in authority in these countries can bury information or make allegations disappear.

Given that foreign governments are often either unable or unwilling to prevent human rights abuses from happening, they argue that international legislation and foreign legislation, especially for the extractive industries as they operate in developing countries where rule of law is not always followed, is not an effective way of making sure Canada's multinational corporations maintain the standard expected by Canadians and run the risk of becoming implicated in human rights violations. Given that reality, how else can we have mining firms improve their behaviour in these minority of cases while realizing that withdrawing activities and investment activity is a non-starter?

TRANSNATIONAL LAWSUITS AND THE NEW NEVSUN PRECEDENT

Activists and scholars with an anti-mining bent look at the lack of legal accountability for actions taken abroad through Canada’s judicial system, in comparison to countries such as the United States, as central to the problem.

They look to the United States where that country’s *Alien Tort Claims Act* litigation is seen as a possible model to aspire to.

However, evolving case law in Canada may come to allow allegations of misconduct and human rights abuses against Canadian extractive firms to be heard in Canadian courts anyways.

The definite game changer is a 5-4 ruling in February 2020 by the Supreme Court of Canada over the *Nevsun Resources* case.³³ In a nutshell, the decision will now allow that foreign plaintiffs may pursue litigation in Canadian courts—rather than through their own home courts—for an alleged breach of customary international law by a corporate defendant that is based in Canada.

The details of the *Nevsun Resources* case also got complicated very quickly as the ownership of the company shifted, or as it is presented here:

Nevsun Resources was a Canadian diversified mining company that was acquired by the Chinese Zijin Mining Group in 2018. One of Nevsun’s principal assets, the Bisha zinc-copper mine in Eritrea, is the subject of the case, *Nevsun Resources Ltd. v. Araya*. Construction began on the Bisha mine in 2008, using workers from the country’s National Service Program. The plaintiffs, three Eritrean workers who arrived at the mine between 2008 and 2010, allege that they were forced to work at least 12 hours a day, six days a week, in temperatures close to 50°C. The plaintiffs also allege that they were subject to abuse while working at the mine.³⁴

The ruling comes after a 2017 decision by the British Columbia Court of Appeal in *Garcia v. Tahoe Resources*³⁵ recognized that sometimes

foreign plaintiffs entangled in these matters live in countries where there exist barriers to justice or where there is evidence of allegations of bias or corruption from within that country’s judiciary. Thus, a precedent was set that Canadian courts should understand that sometimes—in such environments—that these foreign plaintiffs would have a risk of being denied justice in their own jurisdictions. Now, there is credible and undeniable evidence that in many foreign jurisdictions—especially within developing countries—the judicial process is often not independent and even often subject to politicization or corruption. However, it is the case that the *Nevsun* precedent here may open the floodgates to foreign litigants in the Canadian system.

A positive side to this precedent is Canada’s tradition of judicial independence and its high standards of judicial proof. The ombudsperson office mentioned before, as it is currently conceived, has no authority or ability to find facts or ascertain the truth. However, Canada’s courts are quite capable of impartial and expert determinations of facts and law. Also, Canadian courts do not just accept any case to hear. There is an initial high standard of evidentiary weight that must be applied and tested prior to acceptance. So, frivolous, or unsubstantiated claims would have a more difficult time reaching our courts. Then, the few that would meet that standard would be subjected to Canadian impartial processes, including the presentation of evidence and rigorous cross-examination. This, in theory, would entail that only the most credible cases of abuses involving Canadian mining firms operating abroad would result in actual judgments and convictions.

Although there are these evident strengths of hearing cases through the Canadian courts system, there are still some challenges. Despite their popularity amongst anti-mining activists, transnational lawsuits face some significant legal challenges that should ultimately be established jurisdiction. This refers to a court’s legal authority

to adjudicate a matter presented before it. A court may determine that another court has more connection to a situation and should have jurisdiction. Oftentimes, a court may argue the host state would be the best venue because of proximity to people, witnesses, and evidence. The burden is on the plaintiffs to prove that a foreign court cannot provide them a fair trial.

The other obstacle for foreign plaintiffs is the issue of "corporate veil"³⁶ where the parent company is treated separately legally than its subsidiaries, thus shielding the parent company from liability for activities its subsidiaries commit. But these issues are often extremely complicated, and actions taken by parties in the foreign country are not approved or witnessed by the parent company. All these issues are under consideration in these legal claims.

CONCLUSIONS

In closing, Canada's mining operations abroad have earned a very negative reputation based on a minority of cases alleging misconduct by some mining firms. While these allegations should never be ignored or downplayed, the truth is there is not much empirical backing for many of these cases and their truth has not been ascertained in any formal way.

Certain NGOs and activist scholars have exploited this lack of empirical evidence to present a very distorted and one-sided view of Canadian mining that if left unchallenged can affect Canada's mining activities abroad and the reputation of many firms that are conducting themselves ethically.

Canadian mining represents a significant contributor and stimulant to the Canadian economy, so to continue investment abroad, Canada must deal with this image problem. Canadian mining firms abroad also represent a significant source of jobs and government revenues for these developing countries.

However, rather than seek to understand how Canadian mining firms are already employing effective self-regulation, these activists and scholars have assumed that the problem is weak regulations both home and abroad and have promoted remedies that might be more problematic than they are worth. Their calls for an ombudsperson office to deal with these allegations was answered by the federal government a few years ago and they have set up this office. However, activists are demanding this office be emboldened and given semi-judicial powers of investigation.

By countering this distorted picture with evidence from a major and systematic study of Canadian mining behaviour in Latin America, this paper has presented a much more balanced view and shows that Canada indeed has a very positive story to tell regarding its mining activities abroad.

Moreover, the recent *Nevsun* ruling by the Supreme Court of Canada is a significant game changer in this matter, allowing foreign plaintiffs to have their grievances against mining companies based in Canada be adjudicated in Canadian courts. This will put these cases through Canada's impartial and expert judicial system. This will likely have consequences for the behaviour of Canadian mining firms operating abroad in a range of areas, including human rights, Indigenous and local consultation, and the environment.

The federal government needs to assert itself and retake the Canadian brand in mining and promote the great stories of Canada's activities abroad. Canada has a gold standard in mining firm standards in environmental protection and local and Indigenous consultation. These standards are being exported around the world right now. Canada, as well as many developing countries, need more Canadian mining. It's time to take that message to the world.

POLICY RECOMMENDATIONS

- The federal government should proudly promote the “Canadian brand” in its mining operations abroad as one of widespread corporate social responsibility in the areas of environmental stewardship, human rights protection, and Indigenous consultation. In particular, the government and industry should highlight the growing number of foreign countries that are adopting the Mining Association of Canada’s voluntary Towards Sustainable Mining (TSM) standards.
- The federal government should act to counter disinformation and misleading anti-mining rhetoric by some environmentalist and anti-mining groups. Ottawa should take a page from Alberta Premier Jason Kenney’s Canadian Energy Centre and dedicate resources to countering disinformation and promoting accurate information about Canada’s mining firms abroad.
- Ottawa should focus its Ombudsperson for Responsible Enterprise position on conflict resolution and working with all parties. It should **not** replace courts and be given investigatory powers and serve a semi-judicial function. The *Nevsun* Supreme Court ruling will likely create a proper avenue for foreign plaintiffs with legitimate grievances against Canadian mining companies.

ENDNOTES

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