

CITATION: Angelica Choc; German Chub Choc; Caal et al. v. Hudbay Minerals Inc. et al.,  
2013 ONSC 998  
COURT FILE NO.: CV-10-411159,  
CV-11-435841 & CV-11-423077  
DATE: 20130214

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Angelica Choc, individually and as personal representative of the estate of Adolfo Ich Chamàn, deceased, Plaintiffs

**AND:**

Hudbay Minerals Inc., HMI Nickel Inc. and Compañía Guatemalteca de Níquel S.A., Defendants

German Chub Choc, Plaintiff

**AND:**

Hudbay Minerals Inc., and Compañía Guatemalteca de Níquel S.A., Defendants

Margarita Caal Caal, Rosa Elbira Coc Ich, Olivia Asig Xol, Amalia Cac Tiul, Lucía Caal Chun, Luisa Caal Chun, Carmelina Caal Ical, Irma Yolanda Choc Cac, Elvira Choc Chub, Elena Choc Quib and Irma Yolanda Choc Quib, Plaintiffs

**AND:**

Hudbay Minerals Inc. and HMI Nickel Inc., Defendants

**BEFORE:** Carole J. Brown J.

**COUNSEL:** *Cory Wanless*, for the Plaintiff

*Robert S. Harrison and Christopher Rae*, for the Defendants

*Paul Champ and Anna Shea (articling student)*, for the Moving Party

**HEARD:** February 13, 2013

**ENDORSEMENT**

[1] The moving party, Amnesty International ("Amnesty"), brings this motion for an Order granting it leave to intervene in three related actions brought by the individual plaintiffs, Mayan Q'eqchi' individuals from Guatemala, who claim alleged human rights abuses committed against them by the subsidiaries of Canadian mining companies. Amnesty seeks to intervene with respect to identical motions brought by the defendants in each of these cases, in which the defendants seek to dismiss the claims against them as disclosing no reasonable cause of action or, alternatively, to stay the claims on the basis of *forum non conveniens*. I was advised, at the hearing of the motion for leave to intervene, that the second Order sought, namely a stay of the claims on the basis of *forum non conveniens* is no longer being pursued by the defendants.

- Page 2 -

Pursuant to the Order of Justice Archibald, the three motions are to be heard together on March 4 and 5, 2013 and, accordingly, there is urgency to this motion to intervene.

[2] Amnesty submits that it only wishes to intervene to provide the court with a perspective largely drawn from its international experience in the field of international human rights and its involvement in the development of international legal standards, norms and principles in the context of transnational corporate responsibility, and wishes to speak to the issues of the existence and/or extension of a duty of care in the circumstances of this case, which involves a Canadian parent corporation and human rights abuses allegedly perpetrated by its subsidiary as against Guatemalan individuals in a foreign conflict-affected area, namely Guatemala.

[3] Amnesty does not seek to intervene or make any submissions with respect to the evidence to be adduced nor with respect to the factual matrix with respect to the motions.

[4] Amnesty states that it has been involved with and will be able to assist the court with international human rights law and norms which may be of assistance to the court in considering the issues involved in this litigation and these motions. It submits that it has significant experience in and has previously intervened on international human rights issues in numerous cases, and can provide a unique perspective regarding the issue of duty of care in this action. It submits that it can provide a perspective different from the perspective of the parties to the action, given its particular experience and expertise regarding the development of international standards and norms as related to international businesses, related human rights abuses, and accountability of transnational businesses, as well as access to justice for victims of business-related human rights abuses in conflict-affected areas.

Amnesty indicates that these issues have been addressed in several international fora including the UN, through the specially appointed UN Special Representative on the Issue of Human Rights and Transnational Corporations and through the International Court of Justice, in cooperation with international corporations, and that it will be able to assist the Court with respect to these international developments, standards and norms, as well as with respect to international jurisprudence which may be of assistance to the court's considerations and deliberations regarding the duty of care and policy considerations. The evidence indicates that Amnesty was consulted by the United Nations Special Representative on the Issues of Human Rights and Transnational Corporations with respect to the development of the said standards, norms and principles.

#### Law and analysis

[5] Pursuant to Rule 13.02 of the *Rules of Civil Procedure*, any person may, with leave of the judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.

[6] While Rules 13.01 and 13.02 refer to intervention in "a proceeding", which is defined in the *Rules* as an action or application, where a motion could result in a judgment disposing of an action, as is the case here, it may be considered to be more in the nature of a "proceeding within a proceeding" than a mere interlocutory motion, and may be an appropriate case to grant intervenor status: *Trempe v Reybroek*, [2002] O. J. No. 369, 50 70. R. (3d) 76. The onus is on the party requesting leave for intervention to establish that its presence in the proceedings can

assist the court in determining the issues at bar: *M v H*, [1994] O. J. No. 2000 (Ont. Ct. (Gen. Div.)), paragraph 48. As established in the case law, the overarching principle for any proposed intervention, in any case, including constitutional, Charter and other cases, is that the court should consider the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to issues in the motion or proceeding without causing interference to the immediate parties: *Bedford v Canada (Atty. Gen.)*, [2009] O.J. No. 3881, 2009 ONCA 669 (Ont. C.A.).

[7] Where litigation in which the intervention is sought is a private dispute, rather than a public prosecution pitting an individual against the state, the standard to be met by the proposed intervenor is more onerous or more stringently applied. This more onerous threshold may be softened somewhat where issues of public policy arise: see *Authorson (Litigation guardian of) v Canada (Atty. Gen.)*, [2001] O. J. No. 2768, 9 C.P.C. (5th) 218 (Ont. C.A.); *Jones v Tsige*, [2011] O. J. No 4276, 106 O. R. (3d) 721 (Ont. C.A.).

[8] Amnesty submits that because of its long international experience and involvement in protection of international human rights, it will be able to provide a useful contribution with respect to the issues involved in the motions. It argues that given the transnational aspects of these actions, it should be permitted to intervene despite the fact that these actions involve private individuals, albeit regarding alleged international human rights abuses. It argues that it will not involve itself in the evidence and factual matters particular to the cases, and therefore will not unduly interfere in or delay the matters.

[9] Counsel for the plaintiffs made brief submissions. He argued that in his submissions on the motions to be heard March 4 and 5, 2013, he will, on behalf of the plaintiffs, focus on common law principles and not international human rights law and norms. Accordingly, he submitted that Amnesty would be able to bring a unique perspective on the issues, which would be of benefit to the Court.

[10] Counsel for the defendants argues that these are not appropriate matters for intervention, as they relate to purely private disputes. He further argues that intervention in these cases will be an imposition on his clients, the defendants.

[11] Counsel for the defendants argues that Amnesty cannot provide a unique perspective. He further argues that Amnesty is not impartial as regards the lawsuits. I note that the role of *amicus curiae* has evolved from that of a neutral, objective person making submissions to the court. A friend of the court need not be "impartial", "objective" or "disinterested" in the outcome of the case. The courts have recognized a valid contribution may be made in appropriate cases by intervenors who advocate a particular interpretation of the law, or bring a certain perspective, albeit not neutral. The fact that the position of a proposed intervenor is generally aligned with the position of one of the parties is not a bar to the intervention if the intervenor can make a useful contribution to the analysis of the issues before the court: *Oakwell Engineering Ltd v Enernorth Industries Inc.*, [2006] O. J. No. 1942 (Ont. C.A.). Further, the defendants submit that Amnesty has a corporate accountability agenda regarding alleged human rights abuses involving transnational corporations and should not be permitted to intervene and use this litigation as a platform. Finally, the defendants argue, in the alternative, that if intervention is granted, the intervenor should be limited with respect to the length of factum and oral submissions.

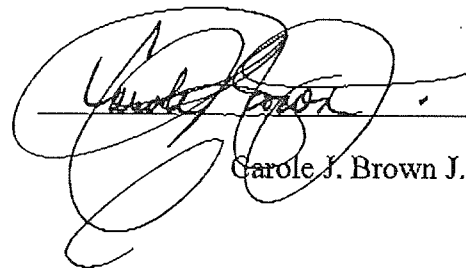
- Page 4 -

[12] I am satisfied that Amnesty has discharged its onus to establish that its presence can assist the court in determining certain of the issues in the motions, and in bringing to the attention of the court considerations of an international nature regarding the issues in play in these cases. I am satisfied that it can bring a perspective different from that of the parties, particularly given its expertise in the areas of international human rights abuse, international and transnational business accountability, and as a result of its involvement in and consultation with the UN Special Representative on the Issue of Human Rights and Transnational Corporations. Given that Amnesty International will not be involved in any of the evidentiary or factual aspects of the cases, I do not find that intervention by Amnesty will cause undue disruption or delay in the motions. Given that Amnesty will only be involved in providing a different view with respect to the legal considerations to be had in determining the issues in the motions, there will be no opportunity for it to use these motions as a "political platform" as argued by the defendants. While the actions involve private disputes, namely actions involving individuals and an international Corporation, with operations in the plaintiffs' home state, the issues involved have international, transnational and public policy overlays which make them appropriate for intervention by Amnesty, which, I find, can make a useful legal contribution.

[13] Considering the issues raised in the pleadings, the nature of the three cases, and the nature of the interventions sought to be made by Amnesty, I grant leave to Amnesty to intervene. The intervention will be limited strictly to making submissions with respect to the issues of law, and particularly international law, standards and norms concerning the existence or scope of the duty of care.

[14] Amnesty shall have the right to serve and file a factum limited to 15 pages by February 20, 2013 and to make oral submissions in the defendant's motion to dismiss or stay the within actions limited to 30 minutes.

[15] I make no order for costs. Each party is to bear its own cost of this motion to intervene.



Carole J. Brown J.

Date: February 14, 2013