

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**ANGELICA CHOC, individually and as  
personal representative of the estate of  
ADOLFO ICH CHAMÀN, deceased**

**Plaintiffs**

**and**

**HUDBAY MINERALS INC. and  
HMI NICKEL INC.**

**Defendants**

**and**

**AMNESTY INTERNATIONAL**

**Moving Party  
(Proposed Intervenor)**

**FACTUM OF THE MOVING PARTY,  
AMNESTY INTERNATIONAL**

*"It is the basic expectation of society as a whole that companies should respect human rights throughout their operations and in their business relationships."*<sup>1</sup>

**OVERVIEW**

1. The moving party, Amnesty International, seeks an order granting it leave to intervene in three related actions arising from allegations of serious human rights abuses committed by Canadian mining companies in Guatemala. The Plaintiffs are all Mayan Q'eqchi' people from Guatemala. The Defendant

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<sup>1</sup> Report of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises (A/HRC/20/29), 10 April 2012, para. 60

Canadian companies want the actions dismissed, contending that a parent corporation can never owe a duty of care to those who may be harmed by the activities of a subsidiary operating in a foreign country. Alternatively, the Defendants say that Ontario is not the appropriate forum to hear the claims.

2. Amnesty International submits that it has expertise in the issues raised by the Defendants and can assist the Court with arguments that will not necessarily be raised or addressed by the Plaintiffs. Access to justice for victims of business-related human rights abuses is a serious problem recognized by the international community. This has led to the development of international legal principles and norms designed to “Protect, Respect and Remedy” abuses caused by the business interests of transnational corporations. Amnesty therefore seeks leave to provide the Court with arguments on the legal issues raised in the actions, including and in particular the following:
  - (a) whether and in what circumstances a parent company will owe a duty of care to protect those who are at risk of harm by the activities of a subsidiary company;
  - (b) The policy considerations that militate in favour of recognizing such a duty of care;
  - (c) The standard of care that a parent company should observe in the context of a “conflict-affected area”; and
  - (d) The application of the *forum non conveniens* test to plaintiffs who live in a conflict-affected area but seek to bring an action against a transnational corporation in its home state.
3. Three claims - Choc v. HudBay Minerals et al (CV-10-411159), Chub v. Hudbay Minerals et al (CV-11-435841) and Caal et al v. HudBay Minerals et al (CV-11-423077) - have been joined for the purposes of the Defendants’ motions to dismiss or stay. All three involve allegations of human rights abuses

committed near the Defendants' Fenix Mining Project in El Estor, Guatemala. Amnesty International has filed a separate motion record for each case, but relies on this factum for leave to intervene in all three matters on identical terms.

### **PART I - FACTS**

4. In 2009, the Defendants owned a mining interest in Guatemala. The Fenix Project was a proposed open pit nickel mining operation located in the municipality of El Estor, in the Republic of Guatemala. According to the statements of claim, Hudbay Minerals controlled the mining project, but it was formally owned by Compañía Guatemalteca de Níquel S.A. ("CGN"), a Guatemalna company. CGN was, in turn, 98.2% owned by HMI Nickel, a Canadian holding company that was completely owned by Hudbay Minerals.<sup>2</sup>
5. The statements of claim describe Hudbay, HMI Nickel and CGN as carrying on a "combined and integrated economic enterprise" - the Fenix Mining Project. The claims assert that the Fenix Project was "directed, controlled, managed and financed" by Hudbay Minerals from its head office in Toronto, Ontario. The claims note that Hudbay Minerals' Country Manager for Guatemala was simultaneously employed as the President of CGN.<sup>3</sup>
6. The mining project is opposed by local Mayan Q'eqchi' indigenous peoples who claim that they were not consulted by the Guatemalan government in the transfer of the land to private interests. Many live on or near the disputed territory.<sup>4</sup>

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<sup>2</sup> Choc Claim, paras. 12-14 [Amnesty Choc Motion Record, Tab 3]

<sup>3</sup> Choc Claim, paras. 15, 19 and 36 [Amnesty Choc Motion Record, Tab 3]

<sup>4</sup> Choc Claim, paras. 38-39 [Amnesty Choc Motion Record, Tab 3]

7. CGN directly employed its own security personnel for the Fenix Project. The Head of Security, Padilla, was known to have criminal allegations against him and he openly carried an unlicensed pistol. The Plaintiffs assert that the Fenix Project security personnel had used unreasonable levels of violence in the past when dealing with Mayan peoples. According to the claims, Hudbay directly or indirectly controlled these security forces.<sup>5</sup>
8. CGN also hired a private security firm, Integración Total S.A. According to the claim, the Integración Total also had a bad history and its personnel was not licensed to carry firearms.<sup>6</sup>
9. The claims all assert that, given these and other factors, the Defendants ought to have known that there was a high risk of violence at the Fenix site. The claims assert that the Defendants were negligent in continuing to engage under-trained and unlicensed security personnel, and failed to implement or enforce standards of conduct that would adequately govern or control the actions of the security personnel. The Plaintiffs claim that the Defendants owed them a duty of care in the circumstances and that this negligent management led directly to the extreme violence that followed.<sup>7</sup>
10. In action CV-10-411159, the Plaintiff Angelica Choc claims that her husband, Adolfo Ich Chamàn, was murdered with a pistol shot to the head delivered by Mynor Padilla, a CGN employee and the Fenix Head of Security. Adolfo Ich was a community leader, a strong advocate for land rights, and prominent critic of the Canadian mining operations. He organized and spoke at a community meeting on September 11, 2009 where he invited locals and

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<sup>5</sup> Choc Claim, paras. 3, 21, and 31-33 [Amnesty Choc Motion Record, Tab 3]

<sup>6</sup> Choc Claim, paras. 22 and 29 [Amnesty Choc Motion Record, Tab 3]

<sup>7</sup> Choc Claim, paras. 80, 82 and 97-104 [Amnesty Choc Motion Record, Tab 3]; Caal Claim, paras 99, 100-105 [Amnesty Caal Motion Record, Tab 2]; and Chub Claim, paras 83-89 [Amnesty Chub Motion Record, Tab 2]

government officials to air the community's grievances. He was murdered just over two weeks later on September 27, 2009.<sup>8</sup>

11. In action CV-11-435841, the Plaintiff German Choc Chub claims that he was shot by Padilla on September 27, 2009, the same date that Adolfo Ich was murdered. Chub survived but is a paraplegic as a result of the attack.<sup>9</sup>
12. In action CV-11-423077, the Plaintiffs are all Mayan women who claim they were forcibly evicted from disputed land at the Fenix Project and then gang-raped by Fenix security personnel as well as members of the police and military who assisted in the eviction.<sup>10</sup>

### **Motions to Dismiss or Stay the Actions**

13. The Defendants Hudbay Minerals and HMI Nickel have brought essentially identical motions in each of the cases at bar, seeking to dismiss the claims as disclosing no reasonable cause of action, or, alternatively, an order staying the claims on the basis of *forum non conveniens*.
14. The Defendants contend in the motions that “there is no legally recognized duty of care owed by a parent company to ensure that the commercial activities carried on by a subsidiary in a foreign country are conducted in a manner designed to protect those people with whom the subsidiary interacts.” Alternatively, the Defendants contend that “serious policy considerations” militate against recognizing any such duty of care.<sup>11</sup>

<sup>88</sup> Choc Claim, paras. 8, 47, 57 and 64 [Amnesty Choc Motion Record, Tab 3]

<sup>9</sup> Chub Claim, paras. 2-3, 52 and 54-55 [Amnesty Chub Motion Record, Tab 2]

<sup>10</sup> Caal Claim, paras. 1-2 and 62-75 [Amnesty Caal Motion Record, Tab 2]

<sup>11</sup> Notice of Motion in Choc, Grounds paras. (f) and (g) [Amnesty Choc Motion Record, Tab 4]; Notice of Motion in Caal, Grounds paras. (i) and (j) [Amnesty Caal Motion Record, Tab 3]; Notice of Motion in Chub, Grounds paras. (f) and (g) [Amnesty Chub Motion Record, Tab 3]

15. In the further alternative, the Defendants assert that the claims should be stayed as Guatemala, not Ontario, is the appropriate and convenient forum for the Plaintiffs' actions. The Defendants motion asserts that Guatemala has "a full and functioning civil judicial system", <sup>12</sup> while the Plaintiffs' claims state that Guatemala's justice system is "dysfunctional and suffers from serious and debilitating problems with corruption, political interference and threats and violence against justice officials and witnesses." The Plaintiffs cite independent reports that state that, as of 2009, there is a 99.75% impunity rate for violent crime in the country. <sup>13</sup>
16. Archibald, J., of this Court issued an order directing the motions to be heard together and establishing a timetable for completing evidence and filing motion records and facta. The Defendants' factum is due January 11, 2013 and the Plaintiffs factum is due February 15, 2013. The motions are to be heard on March 4-5, 2012. <sup>14</sup>

### **Amnesty International Canada**

17. In the present motions for leave to intervene, Amnesty International wants leave to provide the Court with assistance on legal questions and principles only. Amnesty International is part of a worldwide movement founded in 1961. It won the Nobel Peace Prize in 1977 for its work promoting international human rights. Amnesty International Canada ("Amnesty" or "Amnesty Canada") has a strong record as a credible and objective

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<sup>12</sup> Notice of Motion in Choc, Grounds paras. (k) and (t) [Amnesty Choc Motion Record, Tab 4]; Notice of Motion in Caal, Grounds paras. (q) and (cc) [Amnesty Caal Motion Record, Tab 3]; Notice of Motion in Chub, Grounds paras. (i) and (r) [Amnesty Chub Motion Record, Tab 3]

<sup>13</sup> Chub Claim, para. 69 [Amnesty Chub Motion Record, Tab 2]; Choc Claim, para. 76 [Amnesty Choc Motion Record, Tab 2]

<sup>14</sup> Order of Archibald, J., dated May 14, 2012 [Amnesty's Choc Motion Record, Tab 5; Amnesty's Caal Motion Record, Tab 4; Amnesty's Chub Motion Record, Tab 4]

organization that possesses unique expertise in international human rights. Over 60,000 Canadians are members of Amnesty Canada.<sup>15</sup>

18. Amnesty Canada has long been at the forefront of ensuring corporate accountability for human rights abuses. Amnesty's efforts include case-specific work as well as long-term research, analysis and campaigning. Amnesty has been involved in the development of international standards and other key initiatives in Canada and in countries around the world.<sup>16</sup>
19. Canadian Courts, including the Supreme Court of Canada, have regularly recognized Amnesty's research as credible and objective. Further, Amnesty has intervened on international human rights issues in numerous cases before Canadian courts, and in Courts around the world.<sup>17</sup>
20. In the present proceedings, Amnesty does not seek to become involved in the evidence, nor will it take any position on factual matters particular to the case. Amnesty only wishes to appear and provide the Court with a perspective largely drawing upon international legal norms and principles, as well as foreign jurisprudence. Specifically, Amnesty asks that it have intervener status to speak to any legal issues in the action, but particularly the following ones raised in the Defendants' motions:
  - (a) whether and in what circumstances a parent company will owe a duty of care to protect those who are at risk of harm by the activities of a subsidiary company;
  - (b) The policy considerations that militate in favour of recognizing such a duty of care;

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<sup>15</sup> Affidavit of Alex Neve, paras. 7, 11 and 14 [Amnesty's Choc Motion Record, Tab 2]

<sup>16</sup> Affidavit of Alex Neve, paras. 29-33 [Amnesty's Choc Motion Record, Tab 2]

<sup>17</sup> Affidavit of Alex Neve, paras. 19-24 [Amnesty's Choc Motion Record, Tab 2]

- (c) The standard of care that a parent company should observe in the context of a “conflict-affected area”; and
- (d) The application of the *forum non conveniens* test to plaintiffs who live in a conflict-affected area but seek to bring an action against a transnational corporation in its home state.



**PART II - ISSUES**

21. The Moving Party Amnesty International submits that the following issues are raised by the within motion:
- (a) Should Amnesty International be granted leave to intervene in the three actions as a friend of the Court pursuant to R. 13.02 of the *Rules of Civil Procedure*?
  - (b) On what terms should leave be granted?

### PART III - ARGUMENTS

#### TEST FOR LEAVE TO INTERVENE

22. *Rules 13.01 and 13.02 of the Rules of Civil Procedure, RRO 1990, O/Reg 194 ("Rules")* apply, respectively, to persons or organizations seeking to intervene as an added party or as a friend of the court in a given action.
23. Rule 13.02 of the *Rules* states the following:

#### **LEAVE TO INTERVENE AS FRIEND OF THE COURT**

**13.02** Any person may, with leave of a 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.

24. The onus is on the party requesting leave for intervention to establish that their presence in the proceedings can assist the Court in determining the issues at bar.

*M v H*, [1994] OJ No 2000 (Ont Ct(GenDiv)) at para 48

25. Leave to intervene in the scope of a motion can be granted where the motion is akin to a proceeding, such as a motion to strike pleadings.

*M v H*, *supra*, at para 26

26. When determining whether to grant leave to intervene, the matters to be considered are the nature of the case, the issues at bar, and the likelihood of the applicant being able to make a useful contribution to the resolution of the case without causing injustice to the immediate parties.

*Peel (Regional Municipality) v Great Atlantic & Pacific Co of Canada Ltd*, [1990] OJ No 1378 (CA) at para. 10

27. DiTomaso, J., summarized the following principles from the jurisprudence as being specifically relevant in determining whether to grant leave to intervene as a friend of the court:

[I]ntervention as a friend of the court limited to submissions only should be favourably considered where the applicant demonstrates:

- (i) Relevance and usefulness of its intended contributions to the constitutional issues raised;
- (ii) Ability to offer a perspective even slightly different from that of the existing parties; and
- (iii) Its intervention will not cause injustice to the immediate parties.

*Pinet v Penetanguishene Mental Health Centre*, [2006] OJ No 678 (Ont.S.C.) at para 35

28. The Court of Appeal of Ontario, in adopting and applying the test stated in *Peel*, has found that, in addition to cases with constitutional questions, it is generally appropriate to grant leave to intervene in cases involving issues of public interest which demonstrate a wide level of domestic and international importance.

*Issasi v Rosenzweig*, 2011 ONCA 198, para. 20

### The Proceedings At Bar

29. Amnesty International submits that it can assist the Court with the legal issues raised by the Defendants in these proceedings. It has expertise in international human rights law and norms, and can provide submissions that will likely not be addressed by the Plaintiffs. Access to justice for victims of business-related human rights abuses is an important issue domestically and internationally that goes beyond the interests of the parties of the current litigation.
30. Transnational litigation is a growing phenomenon, which is unsurprising given the ever expanding globalization of markets and businesses. In the context of human rights, there has been increasing international concern about accountability gaps for business-related human rights abuses. In some cases, businesses operate through many different levels of corporations, making accountability difficult, particularly where the abuses are committed in countries with weak institutions due to a history of conflict.
31. The statements of claim in all three cases note that the Defendants have established a policy for Corporate Social Responsibility, and have publicized their adherence to the Voluntary Principles on Human Rights and Security, an international voluntary framework developed to promote best practices.<sup>18</sup> Notably, Amnesty was involved in the development of those Voluntary Principles.<sup>19</sup> More recently, the international community of states through the United Nations has also been working over the past several years to develop a widely accepted normative framework for addressing adverse impacts on human rights arising from business-related activity.

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<sup>18</sup> Choc Claim, para. 37 [Amnesty Choc Motion Record, Tab 3]; Caal Claim, para. 33 [Amnesty Caal Motion Record, Tab 2]; Chub Claim, para. 35 [Amnesty Chub Motion Record, Tab 2]

<sup>19</sup> Affidavit of Alex Neve, para. 30 [Amnesty Choc Motion Record, Tab 2]

32. In 2005, the UN Secretary General appointed a Special Representative on the issue of human rights and transnational corporations. The Special Representative was initially asked to “identify and clarify” existing standards and practices. The Special Representative conducted research into standards of international human rights law, commentaries of UN treaty bodies on State obligations concerning business-related human rights abuses, and mapped patterns of abuses by business enterprises.<sup>20</sup>
33. In March 2011, the UN Special Representative presented the final product of his work, the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy Framework”. These Guiding Principles observe that States may breach international law obligations where they fail to take appropriate steps to prevent, investigate, punish and redress private actors’ abuse.
34. In these proceedings, the Defendants contend that policy considerations militate against recognizing a duty of care owed by parent corporations to those who may be affected by subsidiaries in a foreign country. While there is jurisprudence in some jurisdictions that have clearly recognized such a duty, the UN Guiding Principles commentaries explain the policy reasons in favour of recognizing such a duty:

There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State’s own reputation.<sup>21</sup>

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<sup>20</sup> Report of the Special Representative of the Secretary-General on the issue of human rights abuses and transnational corporations and other business enterprises, attaching Guiding Principles on Business and Human Rights (A/HRC/17/31) 21 March 2011, paras. 1-2

<sup>21</sup> UN Guiding Principles on Business and Human Rights (A/HRC/17/31) 21 March 2011, page 7

35. The UN Guiding Principles and other international authorities also speak to the standard of care that should be imposed on corporations operating in “conflict-affected areas”. The Principles recognize that “the risk of gross human rights abuses is heightened in conflict-affected areas”, and therefore businesses need to take adequate steps to assess and address those risks. The concept of “human rights due diligence” is a norm or standard that has been identified.<sup>22</sup>
36. Indeed, the Guiding Principles caution, “Some operating environments, such as conflict-affected areas, may increase the risks of enterprises being complicit in gross human rights abuses committed by other acts (security forces, for example).”<sup>23</sup>
37. Finally, the UN Guiding Principles and other authorities also address the barriers faced by victims of human rights abuses in accessing a remedy in their domestic jurisdiction. Noting that effective judicial mechanisms are at the core of ensuring access to a remedy, the Guiding Principles indicate that claimants who face a potential denial of justice in a host State should be permitted to access the Courts of the corporations home State.<sup>24</sup>
38. Amnesty International submits that this case is of public interest to Canadians and to citizens internationally. The correct and foreseeable determination of when Canadian Courts will assume legal jurisdiction to enforce its laws on Canadian companies operating abroad is of widespread domestic and international importance. Furthermore, the corporate structure of the Defendants in this case is not unique and the determination of liability and civil responsibility in this case will also be of widespread interest.

<sup>22</sup> UN Guiding Principles on Business and Human Rights (A/HRC/17/31) 21 March 2011, pages 10-11 and 16-17

<sup>23</sup> UN Guiding Principles on Business and Human Rights (A/HRC/17/31) 21 March 2011, page 21

<sup>24</sup> UN Guiding Principles on Business and Human Rights (A/HRC/17/31) 21 March 2011, page 23

39. Amnesty International has been defending human rights internationally for over fifty years through various means, including, *inter alia*, legal research and legal action. Its mission is to conduct research and generate action to prevent and end grave abuses of human rights and to demand justice for those whose rights have been violated.
40. In this particular case, an alleged human rights violation has occurred where international jurisdictional matters are involved. While Amnesty International does not take a position on the veracity of any of the factual allegations made, it believes that it could render assistance to the court by lending its expertise to the complex legal issues raised herein.
41. The plaintiffs are very much able to make submissions regarding the factual basis of their case, but their relative inexperience with pleading complex legal issues in Canada means that Amnesty International can play a significant role by placing their expertise at the Court's disposition.
42. On the other hand, the Defendants are corporate entities with interests going beyond the scope of the present proceedings. Amnesty International is therefore well placed to provide detailed and objective arguments on the legal issues in this action as they apply to Canadian Corporations.
43. As a friend of the Court, Amnesty International submits that it is willing to limit its role in the proceedings to providing submissions squarely on the jurisdictional issue and the cause of action, both of which are at issue in this motion.
44. There should be little or no prejudice caused to the immediate parties in this action if Amnesty International is present in the proceedings as a friend of the Court. There shall be no delays as Amnesty International does not seek to introduce evidence, nor will it take any position on factual issues.

45. Amnesty submits that these motions ought to be allowed and Amnesty International granted leave to intervene as a friend of the Court.

**PART IV - ORDER SOUGHT**

46. Amnesty respectfully requests that the motion be allowed and this Honourable Court issued the following orders:
- a. An order granting Amnesty International leave to intervene in the actions *Choc v. HudBay Minerals et al* (CV-10-411159), *Chub v. Hudbay Minerals et al* (CV-11-435841) and *Caal et al v. HudBay Minerals et al* (CV-11-423077);
  - b. The intervenor's role shall be strictly limited to making submissions on issues of law concerning the existence or scope of the duty of care in the within actions and *forum non conveniens*;
  - c. The Plaintiffs and the Defendants in all three actions shall serve the Intervenor with any motions dealing with these issues of law and the Intervenor shall have the right to file a factum;
  - d. The Intervenor shall have the right to file a factum and make oral submissions in the Defendants' motion to dismiss or stay the within actions, with the Intervenor's Factum on these motions being served and filed by February 20, 2013;
  - e. There shall be no order of costs for or against Amnesty International in the motions for leave to intervene or at any other point in these proceedings; and



f. Any other order that this Honourable Court may deem just.

47. Any other order that this Honourable Court may deem just at or following the hearing.

January 11, 2013



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Court File No. CV-10-411159

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ANGELICA CHOC, individually and as  
personal representative of the estate of  
ADOLFO ICH CHAMÁN, deceased**

Plaintiffs

and

**HUDBAY MINERALS INC.,  
HMI NICKEL INC. and  
COMPANIA GUATEMALTECA DE NIQUEL S.A.**

Defendants

and

**AMNESTY INTERNATIONAL CANADA**

Moving Party  
(Party Seeking Intervenor Status)

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**NOTICE OF MOTION OF AMNESTY INTERNATIONAL CANADA**

**(Motion returnable on January 21, 2012)**

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The Moving Party, Amnesty International Canada ("Amnesty Canada"), will make a motion to the judge on January 21, 2012 at 10:00 of the morning, or soon after that time as the motion can be heard at 393 University Avenue, Toronto, ON M5G 1E6.

**PROPOSED METHOD OF HEARING:** the motion is to be heard orally.

**THE MOTION IS FOR:**

1. An order granting Amnesty Canada leave to intervene in any motion or in the action commenced before the Superior Court of Justice in the present matter (Court File No. CV-10-411159) as a Friend of the Court according to Rule 13.02 of the *Rules of Civil Procedure* (“Rules”), for the purpose of rendering assistance to the Court by way of argument only;
2. An order granting Amnesty Canada the right to file written submissions and make oral argument on the legal issues raised in any motion and the action, including and in particular the Defendants’ motion dated April 13, 2012;
3. An order that Amnesty International’s time for filing a factum regarding the Defendants’ motion dated April 13, 2012, and currently scheduled to be heard March 4-5, 2013, is February 20, 2013;
4. An order that no costs be awarded in favour of, nor against Amnesty Canada in its role as a Friend of the Court at any point in the proceedings; and
5. Such further or other orders as this Honourable Court may deem just at or following the hearing of the present motion for leave to intervene.

**THE GROUNDS FOR THE MOTION ARE:****The Nature of the Case and the Issues at Bar**

1. Adolfo Ich Chamàn was a Mayan Q’eqchi’ man who was murdered on September 27, 2009, near his home in the municipality of El Estor, in the Republic of Guatemala. He was a community leader and prominent critic of Canadian mining activities in the area. The Plaintiff Angelica Choc is Adolfo Ich’s widow and the mother of his five children.

2. The Defendant HudBay Minerals Inc. (“HudBay Minerals” or “HudBay”) is a Canadian mining company that is incorporated under the laws of Canada, and headquartered in Toronto, Ontario. HudBay Minerals owns and operates mining projects in Canada and Latin America.
3. The Defendant HMI Nickel was a Canadian holding company and a wholly-owned subsidiary of HudBay Minerals that was headquartered in Toronto, Ontario. HMI Nickel has amalgamated with the Defendant HudBay Minerals to form one corporation also called HudBay Minerals Inc.
4. The Plaintiff alleges that the Defendants’ negligent management of a mining project in Guatemala resulted in the brutal murder of her husband by security forces controlled by the Defendants.
5. The Plaintiffs chose Ontario as a proper forum for this action as they allege HudBay Minerals directly managed its Guatemala mining project from its headquarters in Toronto, Canada.
6. The Defendants have brought a motion to strike the claim as disclosing no reasonable cause of action under Rule 21.01(1) of the *Rules*, contending that the Guatemala mining project is owned by a subsidiary corporation, and therefore the Defendant parent companies cannot owe a duty of care to those who may be harmed by the commercial activities of a subsidiary in a foreign country.
7. The Defendants’ motion argues in the alternative that the action ought to be stayed pursuant to Rule 17.06(2)(c) because Guatemala is the more appropriate and convenient forum for the hearing of the plaintiffs’ action.
8. The Plaintiffs’ action and the Defendants’ motion raise complex legal issues of significant public importance, both domestically and internationally, that impact on accountability for human rights abuses. These issues are:

- (a) whether and in what circumstances a parent company will owe a duty of care to protect those who are at risk of harm by the activities of a subsidiary company;
  - (b) The policy considerations that militate in favour of recognizing such a duty of care;
  - (c) The standard of care that a parent company should observe in the context of a “conflict-affected area”; and
  - (d) The application of the *forum non conveniens* test to plaintiffs who live in a conflict-affected area but seek to bring an action against a transnational corporation in its home state.
9. The correct and foreseeable determination of the legal issues raised in the present case will have widespread domestic and even international importance.

**Amnesty Canada’s Ability to Render Assistance as a Friend of the Court**

- 10. Amnesty Canada seeks leave to intervene as a Friend of the Court with respect to the relevance of international human rights norms to the Plaintiffs’ claims.
- 11. Amnesty International is an international non-governmental organization dedicated to protecting and promoting the rights enshrined in the *Universal Declaration of Human Rights* and other international instruments.
- 12. Amnesty International has almost 3 million members in over 150 countries, including approximately 60,000 members in Canada.
- 13. Amnesty International and its Canadian branch, Amnesty Canada, are recognized as accurate, unbiased and credible sources of research and analysis on human rights around the world.
- 14. Amnesty Canada has a real and substantial interest in the subject matter of these proceedings. Amnesty Canada has demonstrated this interest through its

extensive work on extractive industries around the world, on the mining industry in Guatemala, and on Canadian companies' responsibility for their conduct overseas. Amnesty Canada's efforts in these areas have included monitoring and reporting on human rights abuses, participating in judicial proceedings in Canada and elsewhere, making submissions to parliamentary committees, and taking part in international processes that evaluate Canada's human rights record.

15. In addition, Amnesty Canada has extensive knowledge of the international norms that are relevant in this appeal, most notably the *Universal Declaration of Human Rights*, *International Covenant on Economic, Social and Cultural Rights*, *International Covenant on Civil and Political Rights*, as well as pertinent and persuasive sources of international human rights norms such as foreign jurisprudence and international soft law principles.
16. As an international non-governmental organization, Amnesty Canada has a strong record as an objective and credible organization capable of providing the Court with an international human rights perspective to the issues raised in the motion under Rules 17.06(2)(c) and 21.01(1) of the *Rules*.
17. Should Amnesty Canada be granted leave to intervene as a Friend of the Court, it would make relevant and useful submissions on the international legal principles and norms relating to: establishing whether a duty of care is owed by a parent corporation to individuals who might be harmed by the subsidiary's conduct in a conflict-affected area; the human rights due diligence required to meet the requisite standard of conduct; assessing the most convenient forum; and determining whether the motions brought by the Defendants should be dismissed.
18. The Court's determination of these issues in the present case will have a significant impact beyond the interests of the immediate parties, and will affect Amnesty Canada's longstanding efforts to ensure corporate accountability for human rights abuses in Canada and around the world.

19. Amnesty Canada does not intend to take a position on factual issues that are specific and personal to the parties in the action.
20. Amnesty Canada will not take a position as to the veracity of any of the allegations made, but would reserve its role to rendering assistance to the Court strictly on legal issues as they relate to international human rights and any other areas of Amnesty Canada's expertise.
21. If granted leave to intervene, Amnesty Canada will remain mindful of submissions made by the parties and other interveners so as to avoid duplication of argument and materials before the Court.
22. Amnesty Canada will not cause any injustice or added costs to the immediate parties. As a Friend of the Court, Amnesty Canada will refrain from entering new evidence relating to the claims at bar and will not introduce any new legal issues not already raised in these proceedings.
23. Amnesty Canada will adhere to any timetable the Court may fix for filing submissions and for making oral argument as well as to any limitations regarding the scope and length of same.
24. Rules 1.04, 1.05, 13.02 and 37 of the *Rules*.
25. The Court's inherent jurisdiction to determine its own procedure. and
26. Such other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The statement of claim in this action as variously amended;
2. The Defendants' Notice of Motion dated April 13, 2012;

3. The Order of Archibald, J., dated May 14, 2012;
4. The affidavit of Alex Neve sworn December 6, 2012; and
5. Such further and other documentary evidence that counsel may advise and that this Honourable Court may permit.

January 7, 2013

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