

**COURT OF APPEAL**

(On Appeal from the order of Madam Justice Gerow of the  
Supreme Court of British Columbia rendered November 9, 2015)

BETWEEN:

**ADOLFO AUGUSTÍN GARCÍA, LUIS FERNANDO GARCÍA MONROY,  
ERICK FERNANDO CASTILLO PÉREZ, ARTEMIO HUMBERTO  
CASTILLO HERRERA, WILMER FRANCISCO PÉREZ MARTÍNEZ,  
NOÉ AGUILAR CASTILLO and MISAEL EBERTO MARTÍNEZ SASVÍN**

Appellants  
(Plaintiffs)

-and-

**TAHOE RESOURCES INC.**

Respondent  
(Defendant)

---

**AFFIDAVIT OF ALEX NEVE**  
(sworn 16 June 2016)

---

I, Alex Neve, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Secretary General of Amnesty International Canada (English branch) ("Amnesty Canada") and, as such, have knowledge of the matters contained in this affidavit.
2. I was hired as Secretary General of Amnesty Canada in January 2000. Prior to assuming this position I had been an active member of Amnesty International ("AI") for 15 years, during which time I was employed by Amnesty Canada and by AI's International Secretariat in London, England for 3 years. My activities with AI have included numerous research missions to monitor and report on human rights abuses, the preparation of international and national reports on issues of concern to AI, and participation in AI national and international meetings.

3. In addition to my experience with AI, I hold a Master of Laws degree in International Human Rights Law, with distinction, from the University of Essex in the United Kingdom.

4. As Secretary General for Amnesty Canada, I am responsible for overseeing the implementation of AI's mission in Canada. This includes supervising staff and ensuring that there is a national network of volunteers to carry out AI's work in Canada. My responsibilities also include ensuring that AI's expertise is available to decision-making bodies and the general public, communicating and cooperating with others who are interested in advancing international human rights issues, and educating the public on human rights.

#### Amnesty International and Amnesty Canada: The Organizations

5. AI is a worldwide voluntary movement founded in 1961 that works to prevent violations to people's human rights.

6. AI is impartial and independent of any government, political persuasion or religious creed. AI and Amnesty Canada are financed by subscriptions and donations from their membership, and receive no government funding.

7. There are currently close to 3 million members of AI in over 150 countries. There are more than 7,500 AI groups, including local groups, youth or student groups and professional groups, in more than 90 countries and territories throughout the world. In 55 countries and territories, the work of these groups is coordinated by national sections like Amnesty Canada. In essence, Amnesty Canada is the Canadian branch of the global AI movement.

8. The organizational structure of Amnesty Canada includes a board of 12 directors elected across the country. There are specific country and issue-coordinators in each region and province. Amnesty Canada has a staff of about 50 employees and membership of approximately 60,000 people.

#### The Vision and Work of Amnesty Canada

9. Amnesty Canada implements and shares the vision of AI: a world in which every person enjoys all of the human rights enshrined in the *Universal Declaration of Human Rights* and other international human rights instruments.

10. In pursuit of this vision, AI's mission is to conduct research and take action to prevent and end abuses of all human rights – civil, political, economic, social and cultural.

11. In 1977, AI was awarded the Nobel Peace Prize for its work in promoting international human rights.

12. Amnesty Canada seeks to advance and promote international human rights at both the international and national levels. As part of its work to achieve this end, Amnesty Canada:

- (a) monitors and reports on human rights abuses;
- (b) participates in domestic judicial proceedings;

- (c) participates in national legislative processes and hearings; and
- (d) participates in international committee hearings and other international human rights processes.

a) Monitoring and Reporting on Human Rights Abuses

13. AI's investigative work is carried out by human rights researchers who receive, cross-check and corroborate information from many sources, including prisoners and their families, lawyers, journalists, refugees, diplomats, religious groups and humanitarian and other human rights organizations. Researchers also obtain information through newspapers, web-sites and other media outlets. As well, AI sends about 130 fact-finding missions to some 70 countries each year to directly assess what is happening on the ground.

14. AI uses its research to prepare reports, briefing papers, newsletters and campaigning materials. Among its publications is the annual Amnesty International Report on human rights conditions in countries around the world. Amnesty Canada has participated in the preparation of these reports and has assisted in the distribution of these reports in Canada. AI's research is recognized around the world as accurate, unbiased, and credible, which is why AI reports are widely consulted by governments, intergovernmental organizations, journalists and scholars.

15. Canadian courts, including the Supreme Court, have recognized AI's research as credible. The following judgments have emphasized the important evidentiary role of AI reports: *Mahjoub (Re)*, [2010] F.C.J. No. 900, 2010 FC 787; *Mahjoub v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1503; *Thang v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 457; *Shabbir v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 480; *Ertuk v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1118; and *Suresh v. Canada (Minister of Citizenship and Immigration, et al)*, [2002] 1 S.C.R. 3.

b) Participation in Judicial Proceedings

16. Amnesty Canada has intervened on international human rights issues in a number of cases before the Supreme Court of Canada, including the following cases:

- (a) *R. v. Appulonappa*, 2015 SCC 59: arguing that the definition of "people smuggling" and "human smuggling" in the *Immigration and Refugee Protection Act* must be construed in accordance with Canada's international human rights obligations.
- (b) *Bowden Institution v. Khadr*, 2015 SCC 25: presented submissions regarding the interpretation of the *International Transfer of Offenders Act* requiring Mr. Khadr to serve the remainder of his foreign sentence in a provincial correctional facility;
- (c) *Febles v. Canada*, 2014 SCC 68: presented submissions with respect to the interpretation of the Article 1F(b) exclusion provision of the *Convention Related to the Status of Refugees*;

- (d) *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, 220 ACWS (3d) 313: presented submissions regarding the non-applicability of jurisdictional immunity under the *State Immunity Act* to state-sanctioned acts of torture;
- (e) *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, 241 ACWS (3d) 2: submitted that the test for aboriginal title must be developed in a manner that is consistent with international human rights law, and not arbitrarily or narrowly construed;
- (f) *Minister of Citizenship and Immigration and Minister of Public Safety and Emergency Preparedness v. Harkat*, 2014 SCC 37, 24 Imm LR (4th) 1: regarding the revised security certificate system's violations of international human rights norms;
- (g) *Rachidi Ekanza Ezokola v. Minister of Citizenship and Immigration*, 2013 SCC 40, [2013] 2 SCR 678: proposed guiding principles to help ensure that Canadian decision-makers' application of Article 1F(a) of the *Refugee Convention* is consistent with international law;
- (h) *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 SCR 572: presented submissions with respect to the forum of necessity doctrine and international standards of jurisdiction and access to justice;
- (i) *Canada (Prime Minister) v. Khadr*, 2010 SCC 3, [2010] 1 S.C.R. 44 (granted leave to intervene with respect to what triggers a Canadian citizen's section 7 "life, liberty, and security of the person" interests and the content of the "principles of fundamental justice");
- (j) *Gavrila v. Canada (Justice)*, 2010 SCC 57, [2010] 3 SCR 342 (granted leave to intervene with respect to the interplay between extradition and refugee protection);
- (k) *Charkaoui v. Canada (Minister of Citizenship and Immigration) No. 2*, [2008], 2 S.C.R. 326 (granted leave to intervene with respect to whether the systematic destruction of interview notes and other information by the Canadian Security Intelligence Service in the context of security certificate proceedings violates international norms and the constitutional principles of procedural fairness);
- (l) *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350 (presented submissions on the constitutionality of the procedural protections in the *Immigration and Refugee Protection Act*'s security certificate regime and on the arbitrary detention of foreign nationals under that regime);
- (m) *Schreiber v. Canada (Attorney General)*, [2002] 3 S.C.R. 269 (argued that the right to the protection of mental integrity and to compensation for its violation has

risen to the level of a peremptory norm of international law, which prevails over the doctrine of sovereign immunity);

- (n) *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 (presented submissions to the Court regarding the nature and scope of the international prohibitions against torture, and the mechanisms designed to prevent and prohibit its use, to which the Court referred);
- (o) *United States v. Burns*, [2001] 1 S.C.R. 283 (provided information to the Court on the significant international movement towards the abolition of capital punishment);
- (p) *Reference Re Ng Extradition (Can.)*, [1991] 2 S.C.R. 858 (provided information regarding the international movement towards the abolition of capital punishment); and
- (q) *Kindler v. Canada (Minister of Justice)*, [1991] 2 S.C.R. 779 (provided information regarding the international movement towards the abolition of capital punishment).

17. In addition to advocacy before the Supreme Court of Canada, AI has appeared before other Canadian courts as an intervenor or applicant in the following cases:

- (a) *Canadian Doctors for Refugee Care v. Canada* (Attorney general), 2015 FCA: presented submissions regarding the right of irregular migrants to access to necessary health care under the ICCPR (hearing scheduled for October 26-27, 2015);
- (b) *Prophet River First Nation v. Canada (Attorney General)*, 2015 FC 1030: presented submissions regarding the right of Indigenous peoples to own and control traditional lands claimed by the state as public lands;
- (c) *Tanudjaja et al v. Attorney General of Canada and Attorney General of Ontario*, 2014 ONCA 852, 236 ACWS (3d) 610: presented submissions regarding the nature of Canada's international human rights obligations and the justiciability of social and economic rights;
- (d) *France v. Diab*, 2014 ONCA 374, 120 OR (3d) 174: submitted that Canada's obligations under international human rights law compel Canada to refuse extradition for anyone for whom there is a real risk of admission of evidence derived from torture at the trial following extradition;
- (e) *First Nations Child and Family Caring Society of Canada et. al. v. Canada* (Canadian Human Rights Tribunal File No. T1340/7008, judgment reserved): submitted that Canada's international obligations must be respected in the

interpretation of the *Canadian Human Rights Act* in determining whether Canada has discriminated against First Nations children living on reserves;

- (f) *The Attorney General of Canada v. Pictou Landing Band Council and Maurina Beadle*, Court File No. A-158-13: (leave to intervene before the Federal Court of Appeal granted, but government discontinued the appeal): prepared submissions as Canada's international human rights obligations to ensure that the level of health care services and funding available to a First Nations child living on reserve is equal to that received by a child living off reserve;
- (g) *Tanudjaja et al v. Attorney General of Canada and Attorney General of Ontario*, 2013 ONSC 1878, 281 CRR (2d) 220: presented submissions regarding the nature of Canada's international human rights obligations and the justiciability of social and economic rights;
- (h) *Canadian Human Rights Commission v. Attorney General of Canada*, 2013 FCA 75, 444 NR 120: argued that Canada's obligations under international human rights law were inconsistent with a narrow reading of section 5(b) of the *Canadian Human Rights Act*, which would have precluded a comparison between the child welfare services received by First Nations children living on reserves and children living off reserves; and
- (i) *Choc et al v. HudBay et al*, 2013 ONSC 1414, 116 OR (3d) 674: made arguments regarding corporate accountability for human rights abuses overseas;
- (j) *Canadian Council for Refugees, Canadian Council of Churches, Amnesty International and John Doe v. Canada*, 2008 FCA 229, [2009] 3 FCR 136: intervened with respect to the validity of the US-Canada Safe Third Country Agreement, considering the United States' failure to comply with its international human rights obligations, particularly the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*;
- (k) *Amnesty International Canada and British Columbia Civil Liberties Association v. Chief of the Defence Staff for the Canadian Forces, Minister of National Defence and Attorney General of Canada*, 2008 FCA 401, [2009] 4 FCR 149: submitted that Canada breached its obligations under the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* when it transferred Afghan detainees into the custody of Afghan officials, where they were at serious risk of torture or cruel, inhuman or degrading treatment;
- (l) *Bouzari v. Islamic Republic of Iran*, (2004) 71 OR (3d) 675, 243 DLR (4th) 406: intervened regarding the right of a torture victim to sue for compensation from the offending government; and

- (m) *Ahani v. Canada (Minister of Citizenship and Immigration)*, (2002) 58 OR (3d) 107, 208 DLR (4th) 66: presented submissions regarding Canada's international obligations in response to the UN Human Rights Committee's request that Canada not deport the appellant pending consideration of his complaint to the Committee.

18. Further, AI has been granted intervenor status at the *The Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar* ("Arar Inquiry"), and *The Internal Inquiry into the Actions of Canadian officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin* ("Iacobucci Inquiry"). In those inquiries, AI Canada made submissions on a range of human rights issues, including the prohibition against torture, prohibition against the use of information obtained through torture, and the presumption of innocence of Canadians detained abroad. AI was also granted intervenor status at *The Ipperwash Inquiry*, a landmark report on the issue of policing and Aboriginal land protests in Ontario.

19. In other national and international judicial fora, AI and its national branches have presented submissions on a variety of important matters, including:

- (a) *Hirsi Jamaa and others v. Italy*, [2012] ECHR 27765/09 (European Court of Human Rights): presented submissions regarding Italy's violation of its refugee protection and human rights obligations under the *European Convention on Human Rights* when it intercepted a boat of smuggled refugees seeking asylum and diverted them to Libya;
- (b) *Graham v. Florida*, 982 So. 2d 43 (2010) (United States Supreme Court): argued the relevance of international law to the question of whether a juvenile offender can be sentenced to life in prison without parole for a non-homicide crime;
- (c) *Boumediene v. Bush*; *Al Odah v. United States*, 128 S. Ct. 2229 (2008) (United States Supreme Court): argued that the *Military Commission Act* of 2006 is an unconstitutional suspension of *habeas corpus* under United States law and in violation of the United States' international obligations;
- (d) *Al-Skeini and others v. the Secretary of State*, [2007] UKHL 26 (British House of Lords), an appeal concerning the applicability of the *European Convention on Human Rights* and the UK's *Human Rights Act 1998* to the actions of British armed forces in Iraq;
- (e) *A and others v. Secretary of State for the Home Department (No. 2)*, [2005] UKHL 71 (British House of Lords): presented arguments regarding the inadmissibility of evidence obtained through torture;
- (f) *A and others v. Secretary of State for the Home Department*, [2005] 2 AC 68 (British House of Lords): made submissions regarding the indefinite detention of suspected terrorists under the *Anti-Terrorism, Crime and Security Act 2001*;

- (g) *R. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte* (No. 3), [2000] 1 AC 147 (UKHL) (British House of Lords): intervened with respect to exceptions for state immunity for international crimes; and
- (h) *Chahal v. United Kingdom*, (1997) 23 EHRR 413 (European Court of Human Rights): presented arguments regarding the absolute prohibition against returning an individual to face a risk of torture.

c) Participation in Legislative Proceedings

20. AI has also sought to advance international human rights directly through the legislative process. On many occasions, the organization has provided written and oral submissions to government officials, legislators and House and Senate committees, including with respect to the security certificate regime. Submissions include:

- (a) *Addendum – Insecurity and Human Rights: Concerns and Recommendations with Respect to Bill C-51, the Anti-terrorism Act, 2015* (brief to the Standing Senate Committee on National Security and Defence detailing the human rights implications of Bill C-51), April 30, 2015;
- (b) *Insecurity and Human Rights: Concerns and Recommendations with Respect to Bill C-51, the Anti-terrorism Act, 2015* (brief to the House of Commons Standing Committee on Public Safety and National Security detailing the human rights implications of Bill C-51), March 9, 2015;
- (c) *Brief in Support of Bill C-279* (brief to the Standing Senate Committee on Legal and Constitutional Affairs, supporting the inclusion of “gender identity” as a prohibited ground of discrimination under the *Canadian Human Rights Act*), October 2014;
- (d) *Accountability, Protection and Access to Justice: Amnesty International’s Concerns with respect to Bill C-43* (brief to the House of Commons’ Standing Committee on Citizenship and Immigration, outlining the ways in which Bill C-43 would lead to violations of Canada’s international obligations and the *Canadian Charter of Rights and Freedoms*), October 31, 2012;
- (e) *Unbalanced Reforms: Recommendations with respect to Bill C-31* (brief to the House of Commons’ Standing Committee on Citizenship and Immigration, outlining the ways in which Bill C-31 violates Canada’s international obligations towards refugees and asylum-seekers), May 7, 2012;
- (f) *Fast and Efficient but not Fair: Recommendations with respect to Bill C-11* (brief to the House of Commons’ Standing Committee on Citizenship and Immigration, regarding recommendations with respect to changes brought to the refugee determination process by Bill C-11), May 11, 2010;



- (g) Submissions to the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development, regarding the Universal Periodic Review and the need to strengthen Canada's implementation of its international human rights obligations, including the right to adequate housing, April 2010;
- (h) Submissions to the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities in support of Bill C-304, *An Act to Ensure Secure, Adequate, Accessible and Affordable Housing for Canadians*, November 2009;
- (i) Submissions to the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development, regarding the Universal Periodic Review and the need to strengthen Canada's implementation of its international human rights obligations, including the right to adequate housing, May 2009.
- (j) Oral submissions before the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development (regarding the repatriation of Omar Khadr), May 2008;
- (k) Oral submissions before the House of Commons' Public Safety Committee in December 2007 and the Senate Special Committee on Anti-Terrorism (regarding Bill C-3, the proposed amendment to the security certificate regime), February 2008;
- (l) Oral submissions before the House Defence Committee (regarding the transfer by Canadian troops of Afghan detainees in Afghanistan), December 2006;
- (m) Oral submissions before the House Committee on Citizenship and Immigration (regarding security certificates), November 2006;
- (n) Oral submissions before the Senate and House of Commons' *Anti-Terrorism Act* Review Committees, May and September 2005 (regarding security certificates);
- (o) *Security through Human Rights* (submissions regarding security certificates to the Special Senate Committee on the *Anti-Terrorism Act* and House of Commons' Sub-Committee on Public Safety and National Security, as part of the review of Canada's *Anti-Terrorism Act*), May 16, 2005;
- (p) Brief on Bill C-31 (*Immigration and Refugee Protection Act*) (expressed concern that the proposed legislation provided insufficient protection to persons seeking asylum in Canada interdicted by immigration control officers while *en route* to the country), March 2001; and

- (q) Oral submissions before the House of Commons' Standing Committee on Foreign Affairs and International Trade with respect to Bill C-19 (a bill to implement Canada's obligations under the *Rome Statute* of the International Criminal Court).

d) Participation with International Organizations

21. AI has made submissions to various international organizations and UN monitoring bodies regarding Canada's compliance with its international human rights obligations, including:

- (a) *Canada: Submission to the United Nations Committee on Economic, Social, and Cultural Rights*, Amnesty International's Submission to the UN Committee on Economic, Social, and Cultural Rights, February 2016;
- (b) *Nell Toussaint v. Canada: Legal Opinion Submitted before the United Nations Human Rights Committee* (Communication No. 2348/2014), Amnesty International's legal opinion on the issue of access to health care for irregular migrants, August 2015;
- (c) *Canada: Submission to the United Nations Human Rights Committee*, Amnesty International's Submission to the UN Human Rights Committee, June 2015;
- (d) *Canada: Human rights abuses prevalent among vulnerable groups*, Amnesty International Submission to the Universal Periodic Review, April-May 2013;
- (e) *Canada: Submission to the UN Universal Periodic Review*, Amnesty International's submission to the second review of Canada's human rights record by the UN Human Rights Council, October 2012;
- (f) *Canada: Briefing to the UN Committee Against Torture*, Amnesty International's submission to the Committee's review of Canada, May 2012;
- (g) *Canada: Briefing to the UN Committee on the Elimination of Racial Discrimination*, Amnesty International's submission to the Committee's review of Canada, February 2012;
- (h) *Canada: Submission to the UN Universal Periodic Review*, Amnesty International's submission to the first review of Canada's human rights record by the UN Human Rights Council, February 2009;
- (i) *Human Rights for All: No Exceptions*, Amnesty International's submission to the United Nations Committee on the Elimination of Racial Discrimination on the occasion of the examination of the 17th and 18th Periodic Reports submitted by Canada, February 2007;
- (j) *Protection Gap: Strengthening Canada's Compliance with its International Human Rights Obligations*, Amnesty Canada's submission to the United Nations

Human Rights Committee on the occasion of the consideration of the Fifth Periodic Report of Canada, 2005;

- (k) *Redoubling the Fight Against Torture: Amnesty International Canada's Brief to the UN Committee against Torture with respect to the Committee's Consideration of the Fourth Periodic Report for Canada*, October 8, 2004; and
- (l) *It's Time: Amnesty International's Briefing to the United Nations Committee against Torture with respect to the Third Report of Canada*, November 2000.

22. These international bodies recognize and trust AI's experience, objectivity and distinctive perspective. As Jean-Pierre Hocke (former United Nations High Commissioner for Refugees) noted, "It's a worn cliché, but if Amnesty did not exist, it would have to be invented. It is simply unique."

### **Expertise in Business and Human Rights**

23. In addition to AI's broad expertise in the area of international and transnational human rights law, AI has specific expertise in the area of business-related human rights abuses.

24. AI has long been at the forefront of ensuring corporate accountability for human rights abuses. AI's efforts in this area encompass case-specific work, as well as long-term research, analysis and campaigning. In 2015, for example, AI published a report entitled *Open for Business? Corporate Crime and Abuses at Myanmar Copper Mine*, describing how large-scale forced evictions and serious pollution linked to the mine have destroyed livelihoods and exposed thousands of people to health risks. The report presented extensive new evidence uncovered through AI's research, including serious allegations of wrongdoing and complicity in human rights abuses by the company Ivanhoe Mines.

25. At the international level, AI has participated in a number of major initiatives on business and human rights issues, such as the "Voluntary Principles for Security and Human Rights." The organization also takes part in several high-level standard-setting processes, such as the one developed by the former UN Special Representative on Business and Human Rights, Professor John Ruggie, to establish the Guiding Principles on Business and Human Rights; the review process of the OECD Guidelines for Multinational Enterprises; and the review of the Revised Sustainability Guidelines for the International Finance Corporation.

26. AI also researches and campaigns for effective remedies for victims of corporate human rights abuses in many countries around the world. For instance, AI has documented these victims' inability to obtain justice from domestic courts in the Niger Delta, Guyana, Papua New Guinea, the Democratic Republic of Congo, India and the Ivory Coast.

27. Guatemala is of particular interest to AI, and particularly the extractive industry in that country. AI has researched human rights violations and abuses committed in the context of

mining operations, including issues such as the targeting of human rights defenders who speak out against unwanted development projects in their communities, access to an effective remedy for victims of abuses, and bringing perpetrators of these abuses to justice.

28. With respect to corporate accountability, AI has also been very active in Canada. For instance, Amnesty Canada has sought to establish regulations to govern the extra-territorial activities of Canadian oil, gas and mining companies. In its submissions on Bill C-300, Amnesty Canada provided the Standing Committee on Foreign Affairs and International Trade with examples of human rights abuses committed by Canadian companies and their subsidiaries, and demonstrated the benefits that could result from regulating these companies' activities abroad. In addition, the organization works to protect individual and collective rights in the communities affected by the activities of Canadian extractive companies both domestically and abroad.

### **Amnesty Canada's Distinct Perspective as a Proposed Intervener**

29. The Court's determinations regarding the issues in this case will have a significant impact on the longstanding efforts of Amnesty Canada, and AI internationally, to ensure corporate accountability and access to a remedy for human rights abuses.

30. Amnesty Canada has a real and substantial interest in the subject matter of these proceedings. The organization 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. AI'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 in this area.

31. Amnesty Canada can make a unique and valuable contribution to the issues before the Court. As an international non-governmental organization, AI is well-positioned to provide the Court with an international and transnational human rights perspective to the issues raised in this motion. Amnesty Canada has extensive knowledge of the international norms that are relevant in this case, most notably the United Nations "Protect, Respect and Remedy" Framework on business and human rights, as further exemplified by the widely accepted and adopted United Nations Guiding Principles on Human Rights. It is AI's view that domestic courts must consider and adjudicate private law disputes in a manner consistent with the values enshrined in the *Universal Declaration of Human Rights*, *International Covenant on Economic, Social and Cultural Rights*, and *International Covenant on Civil and Political Rights*. The organization has expertise in relevant jurisprudence in other common law countries.

32. If granted leave to intervene, Amnesty Canada would focus on the relevance of international human rights law to these claims as well as the evolution of the law in other

common law jurisdictions where similar legal issues have arisen. Amnesty Canada does not intend to take a position on issues that are specific and personal to the plaintiffs.

33. If granted leave to intervene, Amnesty Canada will expand on these submissions, while remaining mindful of submissions made by the parties and other interveners so as to avoid duplication of argument and materials before the Court.

### **Overview of Amnesty Canada's Proposed Intervention**

34. Amnesty Canada seeks leave to intervene to address the impact of international and transnational law on the issues in this appeal. AI proposes to make submissions on the legal norms and principles, as developed internationally and in other common law jurisdictions, relevant to applying the doctrine of *forum non conveniens* in actions claiming that a transnational corporation has committed human rights violations in the course of its business activities.

35. In particular, if granted leave to intervene, Amnesty Canada would rely upon its expertise in international and transnational human rights law to make the following submissions:

- (a) Claims brought against Canadian corporate defendants with respect to extraterritorial torts and human rights violations warrant a justice-oriented approach to *forum non conveniens* that gives proper weight to international human rights law and norms governing the right to an effective remedy;
- (b) A justice-oriented approach to *forum non conveniens* is one that takes into account the unique features of transnational tort and human rights cases involving corporate defendants and the governance problems that this class of public interest litigation seeks to address;
- (c) This honourable Court should adopt the approach to *forum non conveniens* that Australia has followed when interpreting s. 11 of the *Court Jurisdiction and Proceedings of Transfer Act*, SBC 2003, c 28 ("CJPTA") in transnational tort and human rights proceedings, whereby, rather than requiring the defendant to identify another forum that is "more appropriate" to hear the action, the corporate defendant would have the burden to show that B.C. is "clearly an inappropriate forum" to hear the plaintiff's claim;
- (d) Such an approach to s. 11 of the CJPTA is founded on the notion that it is more sensible for B.C. courts to assess their own appropriateness than to engage in the invariably contentious and paternalistic exercise of assessing another country's ability to render justice against a B.C. corporation; and

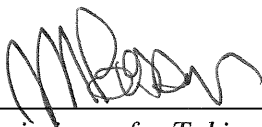
- (e) In the final analysis, the most appropriate forum is the one in which substantial justice can be done, not the forum possessing the highest number of territorial connecting factors to the claim.

36. AI has a strong record as a credible and objective organization that possesses a unique expertise in international and transnational human rights law. Canadian courts have frequently recognized the value of this expertise when interpreting domestic law in light of international and transnational legal norms. I have reviewed the Appellant's Factum in this matter and believe that as an intervener AI would provide distinct arguments on the *forum non conveniens* legal issue raised in this appeal.

37. In the specific area of business-related human rights abuses, Amnesty Canada recently intervened before the Ontario Superior Court of Justice in *Choc et al v HudBay et al*, 2013 ONSC 1414, 116 OR (3d) 674, to present arguments on the issue of corporate accountability for human rights abuses overseas. Furthermore, AI has participated in Canadian legislative initiatives and international standard-setting on business-related human rights; it has also documented the serious obstacles victims of business-related human rights abuses face when seeking a remedy in particular jurisdictions, including Guatemala.

38. Amnesty Canada has a real and substantial interest in these cases, as they will affect its longstanding efforts to ensure corporate accountability and access to a remedy for human rights abuses.

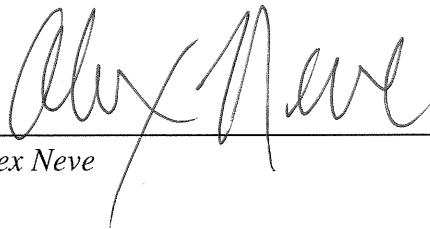
SWORN BEFORE ME at the City of  
Ottawa, in the Province of Ontario  
on 16 June 2016.



Commissioner for Taking Affidavits

(or as may be)

MICHAEL BOSSIN  
Barrister & Solicitor  
LSUC # 19781H



Alex Neve