

## Legal update

### International human rights claim allowed to proceed in Canada cementing legal risks for Canadian companies operating abroad

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In the recent decision of *Araya v Nevsun Resources Ltd.*, the British Columbia Supreme Court has refused to strike proceedings based on human rights abuses alleged to have occurred at a mine located in Eritrea and owned and operated by an indirect subsidiary of a Vancouver-based mining company, allowing the claim to proceed to trial. The decision adds to others in Canada that have found a basis for foreign claimants to bring human rights-related lawsuits in Canada based on international standards and tort, even when the alleged harm takes place in another country. This decision reinforces the need for Canadian companies operating abroad to understand how human rights issues can create legal risks in Canada.

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*Nevsun* is the latest in a number of decisions that have considered whether allegations related to the behaviour of foreign subsidiaries, or the contractors and subcontractors of foreign subsidiaries, can be litigated in Canadian courts. These cases typically involve allegations of human rights abuses in foreign jurisdictions and have arisen predominantly in the extractive sector.

Similar claims are also beginning to appear outside the extractive sector in the context of global supply chains of retail companies, including in relation to the Rana Plaza disaster in Bangladesh.

These cases, and global trends promoting adoption of international standards on human rights due diligence such as the UN Guiding Principles, highlight the importance of forethought in how human rights are managed by Canadian companies. For example, Canadian companies should consider:

- Identifying legal obligations regarding human rights and international standards that could have bearing on their duty of care;
- Understanding international standards such as the UN Guiding Principles and how they should be correctly applied prior to public adoption; and
- Conducting human rights due diligence on foreign subsidiaries, business partners and supply chains, and having a clear understanding of commercial arrangements.

For further discussion and analysis of the *Nevsun* case and international human rights due diligence, see the full article [here](#).

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