



## **Q & A : THE CASE AGAINST CANADA'S TAHOE RESOURCES INC.**

### **What is this case about?**

The case is about seven Guatemalan men who were shot at close range and injured by Tahoe Resources' security personnel on April 27, 2013, in the city of San Rafael Las Flores, while they were engaged in a peaceful protest against Tahoe's mining operations. The men have filed a civil lawsuit in the B.C. Supreme Court seeking damages against Tahoe for its role in causing their injuries.

### **What is Tahoe charged with?**

The lawsuit asserts civil claims against Tahoe for battery and negligence. The claims stem from the violent suppression of a peaceful protest on a public road in front of Tahoe's Escobal mine. The suit alleges that the seven men and others from San Rafael, like thousands of residents in the nearby area, are opposed to the presence of the Escobal mine in their community. They are concerned about potential negative environmental impacts and the lack of meaningful consultation with the community before mining operations began. In early April 2013, local San Rafael residents established a peaceful protest camp on private land near the mine and carried out daily stand-ins on a public dirt road in front of the mine's gates. The lawsuit alleges that on April 27, 2013, Tahoe's security personnel, in a premeditated and unprovoked attack, emerged from the mine in riot gear and began firing at the peaceful protesters. The suit claims that even as the community members fled, security personnel continued to pursue and shoot at them, resulting in the wounding of the seven plaintiffs.

The case further alleges that Tahoe's Guatemala Security Manager, Alberto Rotondo, a Peruvian-Italian man who was brought to Guatemala for the Escobal project, ordered the shooting. On April 30, three days after the shooting, Rotondo was arrested at Guatemala City's airport as he was apparently trying to flee. He has been criminally charged in Guatemala with obstruction of justice, causing serious and minor injuries, and mistreatment of a minor. His pre-trial proceedings are still on-going. Another member of the security team was arrested and charged with concealment. Six of the seven shooting victims are civil parties in the Rotondo prosecution in Guatemala.

The filing alleges that Tahoe is liable for the battery committed against the plaintiffs and that Tahoe expressly or implicitly authorized Rotondo's conduct or was negligent in its management of the security personnel and its oversight of Rotondo. It also alleges that Tahoe knew about widespread opposition to the mine and Rotondo's conflictive relationship with the local community. The lawsuit states that this included a previous incident in which Rotondo threatened members of the San Rafael community and another incident in which he recommended a legal and public denunciation campaign against those opposed to the mine, including the Catholic Church.

According to the lawsuit, Rotondo concocted a plan to use force against the peaceful protesters on April 27, fabricated a story that the protesters had attacked mine employees, ordered security

personnel to tamper with evidence at the crime scene and tried to flee the country to avoid legal problems.

### **What are the plaintiffs seeking?**

The seven victims are seeking a judgment from the B.C. court that Tahoe is legally responsible for their injuries. They are asking the court to order Tahoe to pay damages to compensate them for, among other things, pain, suffering, loss of income and medical costs. They also seek punitive damages against Tahoe that would punish the company for reprehensible and malicious conduct undertaken for the purpose of intimidating peaceful protesters in order to advance Tahoe's business interests.

### **Who is involved?**

The claimants are Adolfo Agustín García, Luis Fernando García Monroy, Wilmer Francisco Pérez Martínez, Erick Fernando Castillo Pérez, Artemio Humberto Castillo Herrera, Noé Aguilar Castillo and Misael Eberto Martínez Sasvín. They are all farmers in San Rafael Las Flores, except for Wilmer who is a student.

They are supported in Canada by a legal team comprised of Vancouver law firm Camp Fiorante Matthews Mogerma (CFM) and the Canadian Centre for International Justice (CCIJ). In Guatemala, they are represented by the Guatemalan Centre for Legal, Environmental and Social Action (CALAS).

### **Why is this case in Canada?**

The lawsuit notes that Tahoe is incorporated in British Columbia and does business in B.C. The company's press releases are issued from Vancouver and its annual meetings are held there. Tahoe is listed on the Toronto Stock Exchange and regulated by the B.C. Securities Commission. Its largest shareholder is Vancouver-based Goldcorp, which owns 40% of the shares. While Tahoe also maintains a U.S. office in Reno, Nevada, it is the B.C. company that owns 100% of the Escobal project, and the lawsuit alleges that Tahoe controls all significant aspects of the operation of the mine.

### **Have there been other civil lawsuits against Canadian mining companies for abuses committed overseas?**

This is the first civil suit in B.C. against a Canadian mining company concerning violence in another country. A small handful of similar cases in Ontario and Quebec, including one against Anvil Mining in which CCIJ was involved, failed to advance, largely for jurisdictional reasons. More recently, three lawsuits against HudBay Minerals Inc. for alleged abuses in Guatemala are moving toward trial in Toronto. In 2013, the judge in those cases ruled that a Canadian parent company may be held directly responsible for its own negligence in failing to prevent abuses by security personnel in connection with overseas operations.

The absence of effective Canadian legislation regulating the international activities of Canadian corporations, many of them active in the extractive sector, has created an accountability gap. The current system of corporate social responsibility is voluntary. Some victims of violence believe their

best hope for holding companies responsible is litigation in the courts of Canada and other national jurisdictions.

### **What happens next in the case?**

Tahoe will have an opportunity to respond to the allegations. Defendants in civil suits usually present legal arguments that a case should be dismissed. The first stages of civil litigation normally relate to legal issues, and an assessment of the evidence does not come until later in the case. Typically, a case will take 2-4 years to get to trial.

### **Why is this case significant?**

Tahoe has publicly claimed that the Escobal mine could one day equal the output of the Fresnillo Mine in Mexico, the world's largest silver mine. The company has also stated that it will be the largest taxpayer in Guatemala. As a result, there is already significant attention on Tahoe's operations in Guatemala. In addition, thousands of residents of communities near the mine have expressed ongoing concern about possible environmental impacts and the lack of meaningful consultation with the community. Community referenda in neighbouring areas have strongly rejected the mine.

This is also the first civil suit in B.C. against a Canadian mining company concerning violence in another country and could set a precedent in the province for these kinds of cases.

### **Can Canadian courts hear a case about something that happened overseas?**

The lawsuit makes allegations about the specific actions and omissions of Tahoe, a Canadian corporation. Although the shooting occurred in Guatemala, the case claims that the company's actions and omissions in Canada led to the shooting. For this reason, the suit is before a Canadian court. In addition, Canadian courts regularly hear cases involving events that occurred in part outside Canada so long as the normal jurisdictional requirements are met. Here, the filing indicates that Tahoe is incorporated in British Columbia, has an office in B.C., conducts its annual meetings in Vancouver and is regulated by the B.C. Securities Commission.

In addition to the handful of lawsuits against Canadian corporations, there have been attempts in Canada to hold foreign governments accountable for their role in abuses using civil litigation. For example, the son of Iranian-Canadian photojournalist Zahra Kazemi, who was tortured, raped and murdered in Iran in 2003, brought suit against the government of Iran in a Quebec court. The government of Iran claimed it was immune from suit under Canada's *State Immunity Act*. The Kazemi case has now reached the Supreme Court of Canada. The court's ruling, expected in the coming months, will determine whether survivors of torture and other abuses can seek redress in Canadian courts against the governments responsible for their abuses.

### **Where can I read more about the case?**

CCIJ's website: [http://www.cciij.ca/programs/cases/index.php?DOC\\_INST=24](http://www.cciij.ca/programs/cases/index.php?DOC_INST=24)

CALAS's website: <http://www.calas.org.gt/>