

HOLDING CANADIAN MINING COMPANIES ACCOUNTABLE: an interview with Professor Emeritus Shin Imai on challenges and pathways in Latin America and Canada

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Professor Emeritus Shin Imai (photo provided by the author)

Interview conducted in person on September 11, 2024.

In this interview, conducted by Thaís Henriques Dias, Shin Imai shares his journey as a lawyer and professor of Aboriginal law and human rights, as well as his perspective on some of his research and advocacy topics, including conflicts involving Canadian-registered mining

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companies in Latin America, the role of the Canadian government and its embassies in these conflicts, strategies for pursuing corporate accountability, and community lawyering. The conversation took place on September 11, 2024, at Osgoode Hall Law School, York University, in Toronto, Canada, during the interviewer's stay as a visiting scholar at the Faculty of Environmental and Urban Change at the same university, as part of an international research fellowship funded by the Brazilian agency Capes (Coordination for the Improvement of Higher Education Personnel).

Shin Imai is a professor emeritus at Osgoode Hall Law School and a co-founder of the Justice and Corporate Accountability Project (JCAP), a volunteer-driven, transnational, collaborative, and community-based legal clinic composed of a small group of volunteer lawyers, law professors, and students based at Osgoode. Since its inception in 2011, JCAP has been dedicated to researching, documenting, and raising awareness of human rights abuses and violence linked to Canadian mining companies. Over the years, JCAP has produced reports and recommendations and has developed expertise in supporting Indigenous and peasant communities across the Americas and Africa, becoming a key reference in both academia and civil society.

At Confluências, we are honored and grateful for the opportunity to share Shin Imai's words with the Brazilian public, hoping to contribute with the solidarity networks on justice and corporate accountability in Brazil and Canada.

This interview was conducted in English and translated into Portuguese with the support of assisted translation tools. The footnotes and bracketed insertions are the work of the interviewer.

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Thaís Henriques Dias: To start, in an interview published in *Canadian Lawyer* last year (Gruske, 2023), I read that you began looking into conflicts between Canadian mining companies and local communities because of your interest in Indigenous rights and your work in Latin America. Could you tell me more about what led you to focus specifically on this topic and how it has shaped your professional and academic path?

Shin Imai: Yeah, my first job after becoming a lawyer was with an Aboriginal community in Northern Ontario. It was quite isolated, there was no road. You could go by railroad or fly into the community. It was a very small community of about 3,000 people, it was very interesting

INTERVIEW WITH PROF. EMERITUS SHIN IMAI

living there. I was just there for a year as a legal aid lawyer, and I got to meet people and learn about their problems. One of the shocking things I discovered there was a power line built from a mining community in the south, south of this community called Moosonee. There was a power line built further north, and in between there was a small community that was living off the land. The construction required damming the river, causing a lot of disruptions to that community, but when they built the power line, they just went right over that community, saying, “Oh well, it was uneconomical” even though that whole community suffered the consequences.

There were a lot of experiences like that, and I decided to focus on representing Indigenous people. I did that for about seven years as a lawyer before becoming a law professor and that's what I taught. It was an issue I was quite familiar with in Canada. When I got involved in a project on human rights in Latin America, I was obviously interested in Indigenous people there. When I started looking into it, the number one issue that came to me wasn't discrimination or language rights... It was Canadian mining companies! That was the biggest issue. I was shocked because I knew nothing about it, and I think most Canadians didn't either, 10 or 15 years ago. Today, I think there is much greater knowledge, partly because more international organizations are trying to support struggles on the ground, it has to come from Indigenous people's struggles on the ground, that's number one. And I think that is happening. Within Latin American countries, there is now greater recognition of Indigenous peoples, and academics like yourself and Priscylla Joca³, both in Brazil and across Latin America, are taking an interest in these issues. I think it has become more recognized as an issue that needs to be dealt with. That's how I got into it.

Thaís Henriques Dias: And how was the Justice and Corporate Accountability Project (JCAP) created? What perspective guides its work, and how do you see the role of law in what you do?

Shin Imai: It's interesting because, as I was saying, after I got involved in the project and learned about these issues, I thought, “This is terrible. Somebody should be doing something about it”. So, I got about ten law students and organized a small seminar. I said, “Here's the

³ Priscylla Joca is a Brazilian researcher and an assistant professor at the Lincoln Alexander School of Law at Toronto Metropolitan University (TMU). Her work focuses on Indigenous and international human rights, with a particular emphasis on comparative legal studies between Canada and Brazil.

problem: we have Canadian mining companies, and all these bad things are happening. What can we do about it?” I assigned each student with a job, “You look up criminal law, is there anything we could do in criminal law? You look up corporate law. You look up international human rights law”. We divided up the work, everyone did their research, and we tried to find out what could be done. What we found was that there were legal structures in place, United Nations conventions, even laws within different countries, but none of them worked. There was so much impunity. It was just amazing. We started doing some work on that and my students said, “Shin, we should give ourselves a name for the project”. They came up with a name, and now there are six or seven of us. They’re all lawyers now. We’re all volunteers working with law students. Two or three of us are professors, and we have law students who either volunteer or get paid in the summer to do research for us. That’s how we operate, producing reports and providing direct assistance or accompaniment to communities in Latin America.

The law part is interesting because I don’t think law is the savior. Law can help, but it is also the oppressor. There isn’t a mining company in Latin America that doesn’t have a concession from the federal government. They are all operating legally, at least on paper, and that’s the law. The law allows them to do this. So, while I don’t see law as a solution in itself, knowing the law gives you a tool to fight back, and that’s what we’re doing.

There is also a difference between an NGO (a non-governmental organization) and the kind of work we do. As a lawyer, you have clients and a responsibility to them, so their job is not to say, “I think this, and I think that, so you should do this or that”. Ideally, a lawyer’s job is to ask, “What’s the problem? What do community members think? What do you want to do about it? How can I help you address this problem?” This is called the community lawyering approach, the community drives the work, not the lawyer. It’s not about saying, “I know this violates the Constitution, so I’m going to take your case to court.” That might be great in law school, but it’s not community lawyering. Even if you believe you’re doing something good, it may not be the community’s priority. The first step is to ask and get a sense of what the community wants, and then we do our job. We don’t have very fixed positions on what communities should want, whereas sometimes environmental NGOs have a strong issue-oriented focus. For example, an environmental NGO might be against fossil fuels so no mining, period. But if a community says, “If we can get jobs and it’s going to help our community, maybe we can live with a mining company,” that NGO can’t help them because they have different positions whereas our view is the community gets to decide. They should have all the

INTERVIEW WITH PROF. EMERITUS SHIN IMAI

information and not make a decision based on false information or company propaganda, but in the end, it's their lives.

That's a difference we have. We do community lawyering as opposed to an NGO which might have very strong views of what should happen. It's not like you need one and you don't need the other. You need both. I think there's room for both. But the gap we identified was that governments have lawyers, mining companies have lawyers, and communities often don't. There may be some legal support available, but in general, it's very difficult for communities to access lawyers who will work on their cases. That's the gap we try to fill. Of course, we're just six volunteers, so we can't handle a big volume of cases, but that's our general philosophy.

Thaís Henriques Dias: And is there a specific case that JCAP worked on that had a big impact on you?

Shin Imai: There are a couple. One of them was a case in Guatemala that we did a lot of work. It involved a very, very violent Canadian mining company. There were four or five targeted assassinations, as well as criminalization of community members... it was terrible. There were also human rights defenders from Canada working with the community, defensores de derechos humanos, and we worked with them. They were in close contact with the community, informing us about what was happening and what we could do to help. Over five or six years, we did a number of things in Canada. Meanwhile, the mining company kept saying, "Oh, the communities love us, everything is fine", but finally the court in Guatemala shut the mine down. They said there had not been enough consultation with Indigenous people.

At its peak, the company's stock was worth \$25 per share. By the time the mine was shut down, the company had to sell, and the shares were worth only about \$5. Over that time, it was very discouraging for us, it seemed like nothing was changing, but when we looked at the stock prices, we realized that every action we took was chipping away at them, and their value kept dropping. I also believe there was a growing consciousness in Guatemala, people were recognizing that this was a bad company. Fortunately, the court made a decision to close it down. It took a long time, but in some ways, it was a bit of a success, because now, there's another Canadian mining company there, but after seeing the terrible things of the previous one, they've tried to avoid them. There are still conflicts, but at least there haven't been assassinations. That case had a big impact on me.

INTERVIEW WITH PROF. EMERITUS SHIN IMAI

Another case was in Peru. In the highlands, there was a very large company called Newmont, which got a mining concession by bribing a judge during the Fujimori dictatorship. They got the concession and then expropriated this piece of land from a comunidad campesina. I don't know if you have something similar in Brazil, but comunidades campesinas are essentially farmers peasant communities that were transferred the land from the large estates (*haciendas*) that controlled vast areas, during agrarian reforms in the 1960s and 1970s across Latin America. Some of that land went to the peasants and they owned it communally to protect the land, instead of owning individual plots. The mining company wanted some of this land, so they expropriated it, paying the community 30,000 dollars. Just a few months later, they mortgaged the land for 85 million dollars. So, the land was actually worth 85 million dollars, and at its height, the mine was making a billion dollars a year, and the community had lost its land and was left with only 30,000 dollars. They don't have electricity, similar to the case in Moosonee. The mining company says, "Oh, we're doing so much for the community, we're helping them" but they won't allow them to get electricity. They don't want the community to settle because they plan to keep expanding, and once people establish themselves with electricity, it becomes harder to displace them. The community went to the Peruvian government, because there was a program for electrification of remote areas, but the government refused, saying that Newmont was going to provide it. Of course, Newmont didn't. They never intended to. And yet, Newmont was very big on corporate social responsibility, "Communities love us, we're doing such a great job, they're so way better off thanks to us". Just like Tahoe Resources in Guatemala: "Communities love us, we're helping them, we're totally transforming the region", but that's not the reality.

I could give you many more examples, but I'll stop there.

Thaís Henriques Dias: Based on the research your team has conducted in Latin America and Africa, have you observed any significant differences in how Canadian mining companies operate inside Canada compared to their operations abroad?

Shin Imai: Absolutely, completely. I once researched a case involving the same mining company operating both in Canada and in Peru. The company was planning to open a mine in Peru, and some lawyers working with the local community reached out to JCAP for help with a court case. We submitted an *amicus curiae* to the Peruvian court. As part of this work, I

INTERVIEW WITH PROF. EMERITUS SHIN IMAI

researched how the Canadian company consulted in Canada versus what they did in Peru. In Canada, before opening a mine, the consultation process with the community took two or three years, partly due to Canadian law. In Peru, the same company proposed a consultation period of just 30 days. They do what they do to just get away with what they can.

Thus, there is clearly a difference, but it's not as clear as one would think. From a Canadian perspective, and I don't know if you've experienced this yourself, everything south of the border between Mexico and the United States is the same, like one big lump: as if all the countries in Latin America were the same, all corrupt, involved in drug issues, and so on. That's also how mining companies talk about the region. When we raise concerns about violence, their response is often something like, "Well, that's Latin America, of course there's so much violence. How do you know that guy wasn't a drug dealer? His murder had nothing to do with his opposition to our mine". So, compared to that stereotype, Canada is way better. You have access to the courts, and they will make decisions. There is violence, but not at the same level. If you had a Canadian mining project where there were five targeted assassinations, I just can't imagine that mine going ahead, everyone would be just so shocked. In the last 100 years maybe there's been one person killed in a land protest in Canada. I don't know how many there were in Latin America, it's like dozens a year or more, so the violence is different.

There is no difference, however in terms of the momentum to open mines, and in areas that are very vulnerable that destroy migratory paths and that pollute rivers, it's the same pressure here as in Latin America. The tactics used by mining companies are similar in terms of divide and conquer. They look for friends within the community, they try to divide and say, "Okay if you're for the mine you get these benefits, if you're not, you don't have to, but too bad you're just out of the picture". There's various tactics that are used.

One distinction is that, in Canada today, most major projects don't move forward unless Indigenous communities have some form of equity involvement, they either own part of the project or they will have guaranteed royalties. It's bringing some elements of the community into the project in a way that doesn't happen in Latin America. But the tactic remains the same: it creates divisions within communities, just as it does elsewhere. In Latin America we're still at the stage where community consultation means that you get a cap with a company logo on it and, "We'll build you a health clinic" and that's it. I've seen cases where they construct a clinic, put the company logo on it, and then leave it empty, because no one is funding anybody to be there, you need doctors, and you need supplies to work. No, all they want is the photo put up

INTERVIEW WITH PROF. EMERITUS SHIN IMAI

the building put on the label. I'm generalizing, but the degree of actual consultation in Latin America is not at the level that is in Canada.

However, Latin America is not a big lump. Different countries have different structures, governments, and legal systems. Some courts are very good, and they will make decisions, like in Chile, even in Guatemala, and Colombia, for example, have very good constitutional tribunals, same in Brazil. They will make decisions that the Canadian court won't do, like they'll close down the mine and have huge fines. You phrase a question if there are differences in Canada and Latin America and it's hard to generalize about Latin America. Even within a country, like Brazil you've come between both Jair [Bolsonaro] and Lula, there's different policies.

Thaís Henriques Dias: Usually, I see these conflicts in Canada involving Indigenous communities, but I'd like to hear from you if there are other social groups in Canada that are also notably affected by these projects.

Shin Imai: There are environmental groups, they're one of the most obvious ones with an interest in the outcome of mining and extractive industry proposals. The relationship between Indigenous groups and these environmental groups can be somewhat complicated. It goes back to what I was telling you before about the difference of what we do as lawyers, we try to follow what the community wants, while NGOs exist to pursue a specific issue.

Within a community, some members may focus on environmental concerns, while others may see the economic support from a mine as essential and try to negotiate something reasonable for them. Another part of the community may be supported by an environmental NGO and they're against the mine. I don't think environmental NGOs create divisions, they articulate concerns that already exist for some members of the community. The NGOs have learned a lot because before, if there was an environmental issue, they would be against the mine without even talking to the community, they were as bad as the mining companies, but now, they don't do that anymore.

So, I think that's certainly a group. Non-indigenous rural communities are also impacted, and they may support the mine because they want the jobs, there are plenty of jobs, like building roads and similar work. Non-native towns want to get economic development, build more houses and that type of thing that comes with a mine. This can create tensions

INTERVIEW WITH PROF. EMERITUS SHIN IMAI

between the non-indigenous community and indigenous groups, who may be less eager or see more importance on their relationship with the land and ensuring the fish will still come up the river, those types of issues. Whereas for the non-indigenous community, well the fish, that's for sport fishing, something they do on Saturdays. For the indigenous community, it's their Loblaw's, their supermarket. That's a source of food. They have very different interests there. I think that's another type of conflict that can occur.

Thaís Henriques Dias: The Canadian government and state has set up a structure to support and protect Canadian companies working abroad, which has been widely reported and discussed. However, holding these companies accountable in Canada for their actions overseas can be difficult. What are the ways to seek this accountability? What legal or political changes could help? Are there any recent movements or upcoming legal reforms in Canada that might make a difference?

Shin Imai: Well, it's been a real challenge. The first problem you identified was the Canadian government's support for Canadian mining companies in Latin America. And that will be related to the second part of your question, which is, what can be done to hold these companies accountable?

The first part of the question is that the more I read, and I'm talking about 10 years ago, it was a big surprise about Canadian mining companies. It wasn't until I started talking to NGOs in Canada and, "Shin, that it's not just the mining companies, it's the Canadian embassies are enabling them. They're pressuring the governments". So, I started looking into all of this, and it's just totally mind-blowing. Do you know about the Inter-American Commission on Human Rights (IACHR)? There was a Canadian mining company in Guatemala and the Inter-American Commission got a complaint. Now the Inter-American Commission is supposed to be independent. Of course, all the OAS, the *Organización de Estados Americanos* [Organization of American States], member states are involved, and they often try to downplay the role of the Commission. I think Brazil may have even pulled out at one point. But you know, there's always this dynamic. Canada has always been a very loud voice in supporting the Commission and its independence, claiming it's a very important institution and that all states should abide by its decisions. Which is great. That's true.

INTERVIEW WITH PROF. EMERITUS SHIN IMAI

In this case in Guatemala, the Commission told Guatemala to suspend the Canadian mine. So, Canada wasn't a part in this dispute, right? What does Canada have to do with that? Well, it's a Canadian mine. The Canadian embassy then goes to the President of Guatemala, and they tell him to ignore the Commission's decision. And not just the ambassador, but Canadian cabinet ministers are involved, phoning, writing letters, even meeting with the company's lawyers to strategize how to proceed. They were pressuring the government of Guatemala to ignore the decision. At the same time, they were also going to the IACHR, where Canada is the biggest funder. Canada requested a meeting with the Secretary General to talk about the case, and they say it was just to get information, but when we asked for information about what happened in the meeting, it was all blacked out. We know the meeting took place, but the details were all black. They won't tell us what happened in the meeting.

Eventually, the Commission withdrew its suspension order. So, what was the Canadian Embassy doing? Not only did they pressure the Guatemala government to ignore the Commission's decision after publicly saying that all states should follow the Commission's decisions, because it's an independent organization, but they also pressured the Independent Commission. We don't know exactly what happened, but we went to court to try to access the information, saying there's no justification for blacking out all the information, and asking to make the details public, so we could understand what was said during that meeting, what the Canadian Embassy said to the Secretary General of the IACHR. There's an exemption in the law about releasing information that could harm international relations. The judge looked at this, and although we and our lawyers weren't allowed to look at it, the judge was. He said, "This is a case where it would hurt international relations if we made this public". So, what was the threat? Was it a bribe? I doubt that's what happened, but it's one possibility. Or maybe it was a threat, perhaps Canada was threatening with taking away their funding? We don't know. But when you try to imagine what might have happened, it could have been a bribe or a threat. The embassies will do anything, and that's the problem.

Over the last 15 years, the Canadian public has become very concerned about Canadian mining companies. There have been various attempts to make a law that deals with them. I think this public concern has made the government pretend that they're doing something. They have a policy about human rights defenders that the embassies are supposed to follow. Again, we went to court. They don't follow them. We went to court to try to make them. And they said there is a policy, but the embassies don't have to follow it. There was also an attempt to create

INTERVIEW WITH PROF. EMERITUS SHIN IMAI

this office called the CORE, the Canadian Ombudsperson for Responsible Enterprise. This person was supposed to be able to investigate complaints about Canadian mining companies. If a community in Latin America had concerns about a Canadian mining company, they could send their complaint to the office, and it would be investigated. And there was a lot of support for the office, but after its announcement, it took two years to appoint someone. In between, there was a great deal of lobbying by the mining industry⁴. And in the end, the office was created, somebody's appointed, but they had no power. No power. If she wanted to investigate a mining company and the company refused to cooperate, she couldn't do anything. Even if she found there was something wrong, her only option would be to report it. She had no authority to make the company do anything. And of course, if you know the history of what the embassies are doing, the reason that it ended up like she has no power makes total sense, right? I mean, you can't have her interfering with what the embassy is doing to support the Canadian mining companies.

The biggest irony, and this is what I hope people in Latin America realize, is that the Canadian government is stupid. The level of stupidity is incredible. A lot of these Canadian mining companies are Canadian because they're incorporated in Canada. They don't have offices, employees, or pay taxes in Canada. Their headquarters might be in the United States, Santiago, or London. And yet, the Canadian embassy is doing everything it can to support these companies. Why would they do that? Why would you do that when they aren't paying any taxes? They paid just \$300 dollars to get incorporated in Canada, and that's it. It makes no sense. It's just an incredible level of stupidity.

Thaís Henriques Dias: Why do you think they do that?

Shin Imai: Well, there's a very strong mining lobby. There are some very big mining companies, and they will benefit from this, from not having to pay taxes in Canada but still getting all the support. So, they lobby. And I think that some politicians just think, "Oh, it's a Canadian mining company. We should support them", without really knowing that they don't pay any taxes in Canada. Some do, especially if they have a mine in Canada, but none of them

⁴ Charlotte Connolly (2019) analyzed the lobbying activities of the two main mining industry associations in Canada – the Mining Association of Canada (MAC) and the Prospectors & Developers Association of Canada (PDAC) – at different levels of the Canadian federal government, between January 2018 and April 2019, during the process of establishing the CORE.

pay taxes for their operations in Latin America, they don't have to. That's why there are so many mining companies in Canada. Yet, the Canadian Embassy provides great, fantastic support. So, they love Canada. You know, free service.

It's a puzzle. There are other parts, corruption, for example. When Prime Ministers retire, they end up on the board of a big mining company. The Minister of Finance retires and joins the board of a mining company. A former ambassador to Mexico retires and then starts working for a Canadian mining company, lobbying the Mexican government. There's that kind of thing. I don't know if there are direct financial benefits, in terms of money, cash, going to bureaucrats or politicians. I have no evidence of that, but if you're looking for reasons, that's one you have to think about. Maybe there are other reasons I can't imagine. It's kind of like that lobbying at the IACHR, the Inter-American Commission. What did the ambassador say to the Secretary General that's all blacked out? It's a serious thing. It affects Canada's reputation and its international relations with the Guatemalan government and with the IACHR. That's what the court said. The judge looked at it. And now we're left to imagine, what was in there? A bribe or a threat. So, you start wondering, "Why does Canada support all these mining companies?" Well, I don't know. Maybe it's not a bribe or a threat, maybe it's something else, but they won't tell us.

Thaís Henriques Dias: In the 2017 report on violence and Canadian mining companies in Latin America (Imai; Gardner; Weinberger, 2017), you noted a pattern in how conflicts are reported by Canadian companies, often shaped by government regulations. For example, many pension funds invest in companies with controversial issues, but members usually don't know where their money is going. It seems like the financial system hides these connections. What are the chances of improving transparency in these cases? How might this help with holding companies accountable? And what are the limits of this approach?

Shin Imai: Working with the communities, we've tried a number of different ways to address this. The first thing we thought of, obviously, we're human rights activists, was to look at human rights legislation. What can we say? Can we go to the United Nations, bring a case to one of their committees? Or can we go to IACHR and make a complaint at OAS? But then we realized that companies don't care. Why would they? Because we can't bring human rights actions against the companies, they're all against the governments. And it's the government that gave

INTERVIEW WITH PROF. EMERITUS SHIN IMAI

them the license to mine. So, it's legal. They are mining legally. And from the company's perspective, that's all that matters. It's the government's problem. They gave them the license. If someone has a complaint, it's against the government, not the company. It doesn't affect the mining company at all. That's why we started looking at what kind of corporate instruments there are to try to hold them accountable. And what are these companies made of? The company has the CEO and the board of directors, but complaining to them was useless, because they would say, "The communities love us". That's all they could say.

So, we started looking at the people investing in these companies. These are banks, pension funds, shareholders, people who buy shares. We started looking at how we can approach those groups. And I'm not saying it's just JCAP. It's an overall strategy that's used by many groups on these kinds of things. We were just doing that, but one of the things that I think JCAP has been a leader on is looking at the companies, whether they're telling the truth about social conflict and about Indigenous consent. One of the things we found from our 2017 report was that companies don't mention protests. They don't mention when someone is killed, and they deny that Indigenous people exist. That's what they tell their investors. They say, "The communities love us, don't worry". They don't talk about the protests.

We used a law called the Securities Act⁵, which applies to these corporations, and started making complaints. We argued that they have to disclose this information because it affects share prices, and shareholders have a right to know. Just to explain what that means: a company can sell its shares through a stock exchange, *Bolsa de Valores*, to whoever wants to buy the shares, but the company has to tell the truth about its strengths and weaknesses. It's like buying a carton of milk. If the label says one liter, but there's actually only 500 milliliters inside, you can complain to the government for false advertising. As a consumer, you have the right to the truth. The same principle applies to investors, they are consumers too, and they have the right to truthful information from the company. If a mine shuts down due to an earthquake, the company can't hide that. They have to inform their investors. Then investors can decide, "Okay, I won't invest in those shares", or current shareholders might sell. But that's the obligation of the company to tell the truth about what it is. They were not telling the truth about social conflict and indigenous consent.

⁵ The Securities Act consists of requirements for investors and companies that list their stocks on exchanges, mandating the disclosure of information on matters that could affect their business. This requirement is enforced by provincial securities commissions, which act as consumer protection agencies for investors.

What we've done is worked on maybe a dozen of these complaints, half of them directly and the other half by helping others file them. We made these complaints to the securities regulators, arguing that the company is not telling the truth about social conflicts. Take the case of Tahoe, for example, five people killed, huge protests, votes in communities around the mine saying, "We don't want the mine", but the mining company never disclosed any of that. Instead, they said, "The communities love us". So, we told the securities regulators that the company has to report this because it affects the mine. If there are protests at the mine and we publicize this, if the complaint gets media coverage, then the stock prices go down. That affects the mining company and its shareholders. It's like holding a ten-dollar bill and suddenly it's only worth five. That's a way of getting some publicity and that's one of the corporate vehicles that we've been using. But it's really ineffective and very tangential, because a shareholder who bought stock at ten dollars suddenly sees it drop to five due to community conflict and the mine shutting down. What can they do? They can sue the company. They could say, "If we had known about these issues, we wouldn't have bought these shares. But you didn't tell us. Now our shares are worth half". They can sue and get compensation. There is a mechanism for dealing with that.

How about the communities? It has no impact on them. They don't get any money. They don't get any compensation. Companies don't even have to change what they do. All they have to do is disclose their actions. If they say, "We eat babies for breakfast", then they've given disclosure. And if someone still wants to buy shares in a company that eats babies for breakfast, they can. No one can complain because they knew what they were buying. So, securities regulation is very tangential. It's not a direct way of finding accountability, but that just tells you how pathetic the whole situation is. This is what we're using. Things like this are so indirect because there's no direct method. Impunity is very strong, and the Canadian government will do everything to protect the mining companies.

Thaís Henriques Dias: I'd like to thank you again for your time and your insightful answers. Before we finish, is there anything else you'd like to add?

Shin Imai: Yeah, I would say that it can get quite discouraging because you're fighting against very powerful forces. But there are victories. They may not come quickly, and they may not come definitively, but unless we keep fighting away, there will be no victories. I think that it's

INTERVIEW WITH PROF. EMERITUS SHIN IMAI

very important to keep the issues alive and to support the communities, even if what you're doing may not seem very effective. I think it's very important that they feel there are other people that are on their side, that they're not totally isolated. I thank you for your work and research because this is what we need more of.

Thaís Henriques Dias: Thank you so much. I was going to ask you if you have any advice for those researching and working on corporate accountability and human rights, but I think you already told us to keep going.

Shin Imai: Yes, keep going and be creative. Think of different tactics, because there is no path. “Caminante, no hay camino, se hace camino al andar”⁶.

References

CONNOLLY, Charlotte. Lobbying by mining industry on the proposed Canadian Ombudsperson for Responsible Enterprise. **Justice and Corporate Accountability Project**, 2019. Available at: <https://justice-project.org/wp-content/uploads/2022/08/2.-Report-on-Lobbying-by-Mining-Industry-july-24-fin.pdf>. Accessed on: 5 April 2025.

GRUSKE, Carolyn. Osgoode project keeps an eye on Canadian mining companies abroad. **Canadian Lawyer**, 28 Nov. 2023 Available at: <https://www.canadianlawyermag.com/practice-areas/esg/osgoode-project-keeps-an-eye-on-canadian-mining-companies-abroad/381786>. Accessed on: 5 March 2025.

IMAI, Shin; GARDNER, Leah; WEINBERGER, Sarah. **The 'Canada Brand': Violence and Canadian Mining Companies in Latin America**. Osgoode Legal Studies Research Paper, n. 17, 2017.

JCAP. **Justice and Corporate Accountability Project**. Available at: <https://justice-project.org/>. Accessed on: 9 March 2025.



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⁶ Lines from the poem “Caminante, no hay camino” by the Spanish poet Antonio Machado, published in 1912.