

### ARE YOU MY BROTHER?

Kevin Martin and Rob Hunter just might share the same sperm-donor dad, A6

### AFGHAN TORTURE SCANDAL

- Harper's office 'scripted and fed' defence, IN1
- One year left to turn Afghanistan around, A2

# SUNDAY STAR

PARTLY SUNNY. HIGH 10C (WEATHER MAP ON S10) • thestar.com • SUNDAY, NOVEMBER 22, 2009

## MINING UNREST: WHY THIS KEEPS HAPPENING

STAR INVESTIGATION

This week, MPs will debate the need for a watchdog to probe dozens of abuse allegations at Canadian mines overseas



LIZ WEYOT PHOTO

Locals protesting a Canadian company mining in Junin, Ecuador, allege in a lawsuit that they were confronted at a makeshift barricade and pepper sprayed. Warning shots, they say, injured one protester. Full story on pages A10 and 11.

STAR EXCLUSIVE

## Native children flooding into aid societies

First Nations activists appalled by move to adjourn human rights hearing until new year

Laurie Monsebraaten  
SOCIAL JUSTICE REPORTER

More First Nations children are in the care of children's aid societies today than were forced to live in residential schools at the height of that shameful chapter in Canadian history.

And yet because of Ottawa's long-standing record of short-changing children on Indian reserves, these children get far less support than non-aboriginal children served by provincial child protection systems, First Nations activists say.

They have taken the matter to the federal Human Rights Commission, which was supposed to begin hearing testimony last week. But in a surprise move, the Harper government's newly appointed commission chair has adjourned the tribunal hearings until January.

"This came as a complete surprise," said Cindy Blackstock, executive director of the First Nations Child and Family Caring Society of Canada, which along with the Assembly of First Nations launched the complaint more than two years ago.

"All of the procedural issues were

CHILDREN continued on A14

## ZHU ZHU MANIA



Is this the hottest Christmas toy, or just the most hyped? We stood in line yesterday to find out. A3

### WAITING FOR A MIRACLE

## Surprise lung transplant gives mom renewed hope

lungs, this gets better. If she doesn't ... she goes and she doesn't have to continue (the fight)."

But on Saturday night he was Tweeting relatives and friends that Ritchie, the mother of a 4-month-old daughter Scarlett, was about to

his/her life."

Word of a possible transplant came around noon Saturday, nearly six months after Ritchie was placed on the transplant list. Just days ago, her condition was so tenuous that doctors had already begun to

Toronto Star, Nov 22/09 p. A10-11

# Copper Mesa sued for alleged assault

Company says it has done everything possible to ensure the highest standards of ethical behaviour

**BRETT POPPLEWELL**  
STAFF REPORTER

JUNIN, ECUADOR—There's copper in these here hills.

Nineteen billion pounds of it, according to Vancouver's Copper Mesa Mining Corp.

The rich deposits buried beneath the tropical cloud forest canopy that covers the Andean foothills in this isolated chunk of northern Ecuador have attracted miners for years. The Japanese came in 1993 and began exploration. But they packed up and left in 1997 amid increasing tension with the locals.

Then came the Canadians, who were immediately opposed by members of the community who say they felt a mine here would jeopardize their way of life and endanger the unique biodiversity of their cloud forest.

Three Ecuadoreans are now suing the Vancouver company in Ontario

court, alleging they were threatened and assaulted for their opposition to the mine.

Executives with Copper Mesa refused to discuss the allegations with the *Star*, but John Keefe, counsel to the company, said in an email that the company "takes allegations of misconduct with respect (to) its ethical conduct very seriously."

"At all times, Copper Mesa has done everything possible to ensure that its business practices meet the highest standards of ethical behaviour and corporate social responsibility."

But the mine's opponents talk of death threats and eviction notices. They show visitors video evidence from the time that, according to allegations in the lawsuit, armed "security forces" working for the company first pepper sprayed them, then "began shooting wildly."

Israel Perez, one of the plaintiffs in the case, rolls up his pant leg and

shows visitors the wound he says he received from a ricocheting bullet fired by one of those armed men.

Allegations in the lawsuit, filed in Ontario last March, have not been tested in court.

This type of case is difficult for the legal system. As part of ongoing international research, Canadian Supreme Court Justice Ian Binnie has found Canadian courts lack the power to deal with claims by people living in the developing world who allege Canadian companies have violated their human rights.

Binnie has found that, as a result, foreigners with legitimate claims may be left with no effective recourse or remedy, while companies that are facing bad publicity in Canada may lack a forum here to legally clear their names.

Copper Mesa (formerly Ascendant Copper) was incorporated in British Columbia in May 2004.

It obtained the rights to build a mine in Junin in July 2004. In March 2005 a local mayor in Junin wrote a letter addressed to the Finance and

Audit Committee of the Toronto Stock Exchange (TSX) asking that the company not be authorized to list its shares on the index.

"It is very clear that Ascendant Exploration's presence (in) our canton has caused serious internal conflicts, divisions and confrontations among the people, generating serious and irreparable problems," Mayor Auki Tituana Males alleged.

Despite the warnings, the company was listed on the TSX on Nov. 21, 2005, and raised \$10,893,800 in its initial stock offering.

Some of that money made it back to Ecuador, where it was used to establish the Intag Development Organization (ODI) — a local face for the company's developmental initiatives.

But that organization quickly clashed with the Defence and Conservation of Ecology in the Intag (DECOIN) — a grassroots environmental organization.

Hostilities between the pro- and anti-mining camps escalated in 2006 until community members put a

chain across the only access road to the proposed mining site and alerted the company that they were no longer welcome in Junin.

It was on that lonely road into the lush, foggy jungles that surround the mining site that a group of armed men in flak jackets and dark green army-style uniforms arrived in trucks on Dec. 2, 2006. Carrying pepper spray, pistols and shotguns, the men confronted the protesters, according to the lawsuit's allegations.

Carmen Piedra, 46, remembers waiting near the community's make-shift checkpoint for the armed men to arrive.

She says she left her post and eight of her 12 children to fetch coffee from her nearby home when she saw two pickup trucks driving toward the protesters, their cabs overloaded with more than a dozen armed men.

"I remember running through the grass, trying to get back to where we had set up a checkpoint to keep the miners from getting into our community," she says.

"That's when I heard the shots com-



BRETT POPPLEWELL/TORONTO STAR

Ecuadoreans Israel Perez, left, Marcia Ramirez and Polivio Perez are suing Copper Mesa Mining Corp., a Vancouver-based junior mining company, alleging they were assaulted for their opposition to the company's mine.

ing from where I had left my family. I hit the ground and started crawling to the scene."

Two German journalism students captured it on film.

In it, unarmed villagers (two have small sticks) from Junin are seen confronting armed men they claim were ex-soldiers working for the company's security forces. The armed men fire pepper spray "point-

blank into the face and eyes" of some of the protesters, the lawsuit claims. When the villagers refuse to leave, guns are pulled and shots are fired in the air. The statement of claim says villagers were blocking "what they thought to be illegal and dangerous intruders."

Though the camera stopped, the violence did not.

In July 2007, Polivio Perez — one of

the most vocal opponents of the mine — was shopping in a nearby village when he alleges he received death threats and was attacked with sticks and rocks by what he describes in the lawsuit as "employees, agents or affiliates" of the company.

According to the statement of claim, police broke up the assault and placed Perez under police protection. Amnesty International issued

an urgent alert about the assault on its website.

Polivio and Israel Perez, along with Marcia Ramirez, filed their lawsuit against Copper Mesa and the TSX in the Ontario Superior Court of Justice earlier this year. In it they demand social and environmental accountability from the company and the TSX for the alleged assaults.

They allege that money raised on the TSX was used to finance paramilitaries in Ecuador, resulting in the December 2006 assault. They allege that the TSX should not have listed the company because it was warned that such conflicts were likely to occur.

"The plaintiffs assert that the defendants TSX Inc. and TSX Group were aware or ought to have been aware of all or many of these instances, and ought to have taken them into consideration prior to listing Ascendant," the statement of claim reads.

The mining company has not issued a statement of defence.

A statement from the TSX in the court file says: "The TSX defendants intend to bring motions to strike the statements of claim as they disclose no reasonable cause of action against them."

On Friday, a lawyer for the TSX parent company said the lawsuit will be "vigorously" defended.

Toronto lawyer Murray Klippenstein has taken on the Ecuadoreans' case and says it is illustrative of a larger problem.

"Canadian mining companies are not being held responsible for the harms that they create abroad," he says.

"Do Canadians know or care what their companies are doing in the Third World? I don't know. But we want to know if Canadian law can even handle these kind of allegations."

The company is adamant that it is innocent of the allegations.

"Copper Mesa believes that there is no merit to the allegations made against Copper Mesa and its directors," says Keefe, company counsel. "Copper Mesa has attempted to work cooperatively with members of the community in Ecuador."

The Ecuadorean government nullified the company's rights to mine in Junin in January 2008. However, the company still claims ownership over the copper deposits that lie beneath this land and remains actively trying to sell those rights.

Star reporter Brett Popplewell recently travelled to Ecuador on a fellowship awarded by the Canadian Newspaper Association and funded by the Canadian International Development Agency.

# One man's defence of

BRETT POPPLEWELL  
STAFF REPORTER

Canadian mining companies are facing allegations of abuse and assault on local citizens in dozens of developing nations.

The companies say they have done nothing wrong — mining copper, gold and other metals brings only prosperity to these poor regions.

Yet locals in countries like Ecuador allege some companies have used armed guards to violently trample their opposition to mines that threaten rainforests and their way of life.

The word "Canada" is so reviled in some places that travelling Canadians mask their citizenship by wearing American flags on their caps and backpacks.

In Ottawa this week, at a House of Commons committee, MPs will continue debating a Liberal private member's bill designed to put controls on mining companies overseas.

The allegations are severe: From Ecuador comes a lawsuit, filed in Ontario, alleging that in 2006 a Canadian company's armed security forces attacked unarmed locals with pepper spray first, then fired guns to dampen protest near a proposed mining site.

In El Salvador, allegations of violent attacks against anti-mining activists. In Mexico, allegations of human rights and environmental abuse that led a Mexican court to close a Canadian-owned mine.

While MPs in Canada consider controls, foreign pension funds have signalled they will not invest in Canadian mining companies unless they adopt firm corporate responsibility rules abroad.

International Trade Minister Stockwell Day says there will be no legislative action because it would not work, and the companies do not need it.

"As you know, one country doesn't develop laws that apply in another country," he said in an interview.

**THE ALLEGATIONS** of human rights abuses come from at least 30 of the world's poorest countries and have named companies of all sizes, from giant corporations to junior mining companies.

Company spokesmen at some firms say they are the target of false allegations that stem from poorly run or corrupt governments where mines are located.

"The biggest challenge out there is a lack of governance capacity in developing countries," says Gordon Peeling, CEO of the Mining Association of Canada, which represents the interests of Canada's largest mining companies.

"If (countries) had the capacity to protect civil rights and live up (to) their international obligations with appropriate justice systems, etc. we wouldn't have much to talk about."

Forty-three per cent of the mining exploration around the world can be attributed to Canadian mining companies.

"In many countries, when foreign investors arrive, it happens too often



John McKay, Liberal MP for Scarborough-Guildwood, has introduced a private member's bill designed to put controls on mining companies overseas. Conservatives have vowed to kill the bill, which is opposed by Canada's mining industry. MPs are debating it in a House of Commons committee this week.

PAWEL DWULIT FOR THE TORONTO STAR

that local, even national governments will wash their hands of these regions," says Louise Léger, director general of Foreign Affairs Canada's Trade Commissioner Service.

"In other words a company wants to invest, and all of a sudden it becomes responsible for building schools, roads, setting up health-care services, and providing basic services that all governments must ensure their citizens."

But watchdog groups like Mining-Watch Canada and the Halifax Initiative, both based in Ottawa, allege some companies spend money buying guns, employing paramilitaries,

spect to anything that I might say to you."

**POLITICIANS HAVE** long squabbled over how best to deal with the accusations of abuse.

Debate kicked up in 2002 after a United Nations report called on the Canadian government to investigate the actions of seven Canadian companies accused of illegally exploiting resources from the Democratic Republic of the Congo, which has been in a state of civil war since 1996.

The Canadian government didn't investigate.

Then in 2004 came reports of

was employing paramilitary forces to trample tribal grounds and abuse human rights.

The committee called for an investigation. The Liberal government at the time responded, saying it recognized "the difficulties Canadian companies can face when operating in foreign jurisdictions" and said the TVI case "highlights the complexities of evaluating company activities against standards that may be either unclear or inconsistent between governments."

Again, the government didn't investigate.

The company says it now has "com-

Immediately, members of the roundtables (other than Peeling) began to ask what happened to the independent ombudsman. The Mining Association's Peeling was one of 17 signatories to the roundtables' 2007 recommendations.

He now says any legislation mandating companies adhere to a set of corporate social responsibilities would not be in keeping with those recommendations.

Peeling was recently named one of the most influential lobbyists in Ottawa by *The Hill Times*.

According to records kept by the Office of the Commissioner of Lobbying Canada, Peeling, along with two dozen other lobbyists for mining companies and associations, has been actively lobbying MPs over their responses to the roundtable report since its release.

The Liberal Party's McKay and others say the lobbyists have been successful in dissuading the government from creating an ombudsman.

**MININGWATCH CANADA** and the Halifax Initiative, both roundtable signatories, have criticized Day's response to the recommendations.

But Day says: "They need to get a real look at what is going on. They need to see the high quality of work that Canadian companies do and how they respect host governments and local communities."

Richard Janda, a law professor at McGill University and co-author of *Corporate Social Responsibility: A Legal Analysis*, says Day's initiatives are weak and disregard the severity of the allegations.

He also questions Day's appointment of Marketa Evans as Canada's

“ This idea . . . that somehow I have become complicit with an agenda that the mining industry is driving is absolute nonsense ”

MARKETA EVANS, CANADA'S CORPORATE SOCIAL RESPONSIBILITY COUNSELLOR

brining officials and forcefully relocating entire communities.

Allegations like these caused John McKay, Liberal MP for Scarborough-Guildwood, to introduce the private member's bill being debated in committee.

"Not only is there a behavioural risk to an individual company, but there is also a risk to our national reputation."

Mining companies are big business in Canada and, with about 200 active lobbyists, a powerful voice in Ottawa.

So powerful that McKay is cautious in talking about his bill outside of chambers.

"I have to watch what I say," he says.

"On specific (allegations) I would probably duck because I don't have parliamentary immunity with re-

bloodshed.

From Africa: Where the UN says 73 people were killed in Kilwa, a fishing town in the Congo. Killed, according to a UN report, by the Congolese military, which used vehicles, supplies, pilots and drivers from a Canadian-Australian mining company to transport them to the site of the massacre. The company, Anvil Mining, says its vehicles were confiscated by the military and that it had no choice but to comply under Congolese law.

To Southeast Asia: Where 15 Canadian-employed mine workers were gunned down in a remote Philippine jungle strip, victims of a feud between Canada's TVI Pacific Inc. and the indigenous peoples of Mindanao. In 2005, a foreign affairs committee looked at allegations that TVI Pacific

plete support" from the community and that there have been no recent altercations.

**BY 2007** an independent foreign affairs committee was hosting roundtable sessions with watchdog groups, human rights organizations, academics and mining companies to review the lack of oversight. They put forward 27 recommendations to the government calling for the creation of a code of ethics for mining companies operating abroad and for an independent ombudsman to investigate alleged abuses. On March 26, 2009 — two years after the roundtable report — Day issued a press release announcing new initiatives to support responsible practices for Canadian businesses abroad.

# Copper Mesa sued for alleged assault

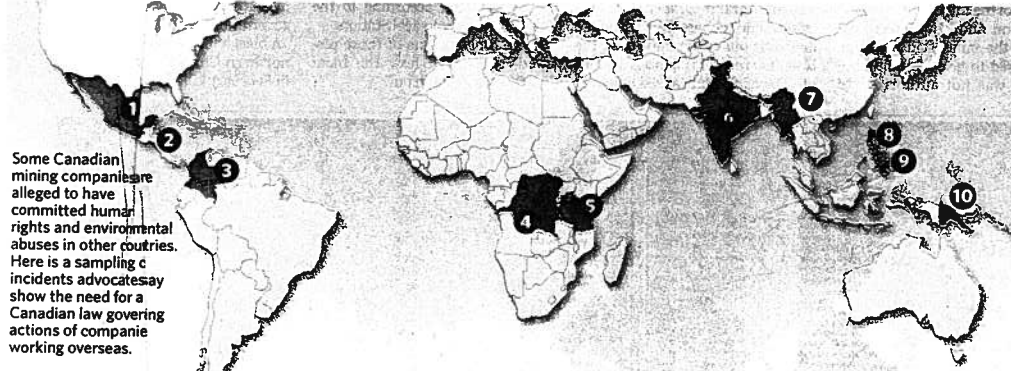
Company says it has done everything possible

shows visitors the wound he says he . . . Audit Committee of the Toronto . . . chain across the only access road to

on powerful Canadian mining companies that operate overseas

# a national reputation

## Trouble a Canadian mining sites around the world



Some Canadian mining companies are alleged to have committed human rights and environmental abuses in other countries. Here is a sampling of incidents advocates say show the need for a Canadian law governing actions of companies working overseas.

### Americas

**1. MEXICO:** Human rights and environmental abuse allegations led a Mexican court in September 2009 to order a Canadian company to shut down a mine near a 400-year-old town. Last week the Mexican environmental enforcement agency shut down the mine. Allegations soon followed that mining employees had attacked three villages blamed for the mine's closure. The company is appealing the closure.

**2. EL SALVADOR:** El Salvador revoked a Canadian company's mining rights in 2009 after investigating environmental damage allegations. The company is challenging the decision. Recently, an El Salvador group's "Speaking Tour Against Canadian Mining in El Salvador" visited Canadian universities to complain of alleged "violent attacks against anti-mining activists."

**3. ECUADOR:** In 2006, protests against two Canadian mining projects erupted in violence. In the south, the people of two towns came to blows when mining opponents clashed with the mine's supporters. The company says it was not involved in the violence. In the north, a community opposed to mining was attacked by people sprayed and shot at by people locals claim in a lawsuit were part

of the company's security forces. The company says there is no merit to the allegations.

### Africa

**4. DEMOCRATIC REPUBLIC OF THE CONGO:** In 2002, amid a brutal civil war, the UN says 73 people in a fishing village were killed in a military assault using a Canadian-Australian firm's mining vehicles, supplies, pilots and drivers, which the mining firm says were commandeered under Congolese law. On its website, the company says it is "disappointing that accusations and continuous and repetitive allegations" about its involvement in the attack continue to be raised.

**5. TANZANIA:** In 1996, local small-scale miners were evicted to make way for a Canadian mining company. Amnesty International and an international fact-finding team with Canadian and U.S. members have repeatedly called for an investigation into allegations by locals that 52 small-scale miners were buried alive when they refused to leave. Foreign Affairs Canada did not investigate. The company says there is "no credible basis for the allegations."

### East

**6. INDIA:** In 2000, three anti-mining protesters were killed

by police and several others injured in a mass rally against a proposed Canadian mining site that opponents feared would displace 10,000 people. Because of the violence, the Canadian Auto Workers union refused to smelt any metals from the proposed mine. The company ceased operations, declaring it would not work in the area unless the police could restore order.

**7. BURMA:** In 1996 a Canadian mining company began investing in a shared mining venture with Burma's internationally condemned military regime. The company says it consulted the Canadian government before going into business with the regime. It later transferred its assets in the venture to a third-party trust.

**8. THE PHILIPPINES, MARINDUQUE PROVINCE:** Two rivers were overrun with toxic waste in 1996, the alleged result of a Canadian mining company using them as a toxic dumping ground. The province of Marinduque filed suit against the Canadian company to try to hold it accountable for the disaster. The company blamed the disaster on heavy rainfall that burst a dam and spread the waste.

**9. THE PHILIPPINES, MINDANAO PROVINCE:** At least 15 people working for a Canadian mine were gunned down in 2004.

The company blamed local opponents of the mine for the assault and hired security forces to defend the site. Watchdog groups allege those forces fired on protesters and forcibly evicted families living near the mine. A Foreign Affairs committee asked the government of Canada to investigate the situation in 2005. The government did not. The company says there have been no recent altercations and that the company has "complete support" from the community.

**10. PAPUA NEW GUINEA:** Last month a Canadian Foreign Affairs committee heard testimony from a New York-based human rights group alleging local security guards working for a Canadian mining company are routinely gang-raping local women. "The guards, usually in a group of five or more, find a woman while they are patrolling on or near mine property," the committee heard in testimony. "They take turns threatening, beating, and raping her. In no cases were the women aware of any investigation, prosecution, or punishment of the alleged perpetrators." The company calls the allegations "nothing more than a compilation and regurgitation of salacious (and typically false) allegations made by a collection of unaccountable anti-mining NGOs."

SOURCES: Testimony at federal committee, court documents, company reports, interviews with people alleging they were attacked, and reports filed by non-governmental organizations based in Canada and overseas.

first corporate social responsibility counselor, a recently appointed bureaucrat who answers to Day and who is the closest thing to an ombudsman the Harper government has produced.

He says Evans' position is "toothless" because, under the mandate given to her by Day, she requires consent from a mining company before she can review any allegations against that company.

He asks what kind of oversight the government expects from an appointee with no real investigative powers charged with enforcing a voluntary code of ethics with no legislation to back her up.

Evans, who took office last month, has no staff and has yet to begin putting together any process for review-

ing complaints. But she stands up to her detractors.

Asked how she can be expected to investigate complaints against a company without the company's consent, Evans said: "My hypothesis is that companies will want to participate in a review."

Others have taken their criticisms further, alleging Evans is too close to the mining industry.

Evans was the founding director of the University of Toronto's Munk Centre — named for and funded by Peter Munk, founder of Canada's Barrick Gold.

"This idea that's floating around somewhere in the ether that somehow I have become complicit with an agenda that the mining industry is driving is absolute nonsense," she

says.

Bob Rae, Liberal MP and foreign affairs critic, says he doesn't take exception to Evans' background so much as her mandate.

"The roundtables talked about having an ombudsman who would hear complaints and deal with them in an independent fashion," he says. "Instead we have a counselor who is right at the heart of government, has no legislated mandate and has no powers as defined by law."

**JANDA SAYS** A Liberal private member's bill, the one tabled by John McKay to regulate the industry, would better serve the 2007 roundtable recommendations. That bill gives the minister of foreign affairs and the minister of international

trade the responsibility of holding corporations accountable for their practices by submitting annual reports to the House of Commons and the Senate for review. It also allows transgressors to be publicly lambasted and deprived of investment from the Canada Pension Plan and other government investments.

But as a private member's bill it is not able to create an ombudsman position that would spend taxpayer money to investigate allegations of Canadian-financed abuses in the developing world.

McKay recognizes his bill is flawed in its inability to create an ombudsman. He's also not convinced his bill will ever make it through the House. The Conservatives have vowed to kill it and McKay says some Liberals

are weary of attaching themselves to a bill opposed by some of the richest companies in the country. "The mining industry in Canada is too powerful a lobby," McKay says.

But he won't say much else. "I have to be extremely careful because the mining companies have made it very plain to me that, 'We will sue your ass off if, in fact, you make any allegation of our companies and cause reputational damage.' "But I will say, if they think they can treat a Canadian MP this way, you can imagine what they say about Third World countries where they can walk in and say, 'How much to buy you?'"

### CANADA'S MINING INDUSTRY

**1,373**

Number of mining companies listed on the TSX (2007)

**79 billion**

Valued at \$482 billion  
Number of mining shares traded on the TSX (2007)

**43%**

Percentage of total world mining exploration attributed to Canadian mining companies

**60%**

Percentage of world's mining companies registered in Canada

**\$21 billion (u.s.)**

Total value of Canadian mining companies' assets in Africa

**20%**

Percentage of the total Canadian-owned African mining assets located in the war-ravaged Democratic Republic of the Congo.

**193**

Number of registered mining lobbyists in Canada as of Nov. 3, 2009

**30**

Number of countries where Canadian mining companies have allegedly violated human rights

**0**

Number of Canadian laws that regulate mining companies abroad

Sources: The Mining Association of Canada, Committee of Foreign Affairs and International Development, The Office of the Commissioner of Lobbying of Canada, L'Entrée missionnaire

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"But I will say, if they think they can treat a Canadian MP this way, you can imagine what they say about Third World countries where they can walk in and say, 'How much to buy you?'"

### Check out the video

Watch a video about the conflict between a Canadian mining company and locals in Ecuador at [thestar.com/videozone](http://thestar.com/videozone)

**thestar.com**



Toronto lawyer Murray Klippenstein has taken on the Ecuadorean case and says it is illustrative of a larger problem.

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