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**Office of the Extractive Sector
Corporate Social Responsibility (CSR) Counsellor
Annual Report to Parliament**

October 2009 – October 2010

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***Views expressed herein are those of the Office of the Extractive Sector CSR Counsellor.
Errors and omissions remain the responsibility of the Office.***

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Executive summary

This report summarizes the first year of the existence of the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor, from the beginning of the current Counsellor's mandate on 19 October 2009 to the launch of the Office's review process on 20 October 2010. The report shares some of the key learnings from the main activities of the Office in its first year: extensive and ongoing multistakeholder conversations and consultations, desk research, and benchmarking of other recourse and review processes.

The Office was created as one element of the Government of Canada's CSR Strategy for the Canadian International Extractive Sector. The CSR Strategy added the Government of Canada's endorsement to three globally recognized performance guidelines: the International Finance Corporation's Performance Standards, the Voluntary Principles on Security and Human Rights and the Global Reporting Initiative. The other elements in the CSR Strategy are: to support host country capacity building for resource governance, to support the awareness and use of the standards, and to create a CSR Centre for Excellence.

The Counsellor's mandate is two-fold: to review the CSR practices of Canadian companies operating outside of Canada in the context of these standards, and to advise stakeholders on the implementation of the endorsed performance standards. The Office's goal is to improve CSR results on-the-ground through the review mechanism and through enhanced use of performance standards.

To support the construction of this brand new Office, the Counsellor adopted a pro-active, cross-sector, open and dialogue-based approach with the wide range of stakeholders interested in the issues of CSR and Canada's mining, oil and gas industries.

The construction of the Office's review mechanism, a dispute resolution process, was informed by this multiperspective dialogue. The mechanism responds to the interest expressed by many during informal and formal consultations, an interest in a safe space for constructive problem-solving. The process permits Canadian mining, oil or gas project-affected communities, groups or individuals to bring a request before the Office; Canadian companies that believe they are the subject of unfounded allegations may also bring a request. Complete information on the process and supporting documents for potential participants are available on the Office's website.

During the first year of the Counsellor's mandate, the main priorities were: to build a robust understanding, from a variety of perspectives, of the issues related to CSR and Canada's mining, oil and gas companies overseas; to establish the Office (opened in Toronto on 8 March 2010); to collaboratively build the review process, including the rules of procedure and supporting materials for potential users; and to sharpen the Office's value proposition. After a comprehensive consultations process, documented in reports available on our website, the review process was formally launched on 20 October 2010.

In looking ahead to the next year, fleshing out the advisory mandate of the Office is now a key priority. The advisory mandate will focus on providing best practice guidance to all stakeholders on the implementation of the three newly endorsed performance standards. The Office will advise "in the public interest." The Office's objective is to contribute to informed public discussion on the performance standards. Proactive outreach and engagement will continue.

Introduction

This report summarizes the first year of the existence of the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor, from the beginning of the current Counsellor's mandate on 19 October 2009 to the launch of the review process on 20 October 2010.

In an effort to inform the construction of this brand new Office, the Counsellor has spent much of the past year in conversations with the multitude of constituencies who have an interest in the issues related to Canadian mining, oil, and gas companies operating overseas. These stakeholders include Canadian companies, host country authorities, project affected communities and individuals, joint venture partners, Canadian industry associations, overseas industry associations, professional associations, Canadian NGOs, non-Canadian civil society groups, Canadian parliamentarians, host country regulators, service providers including the legal and consulting communities, socially responsible investors, academics, international financial institutions, global initiatives, and others. The Counsellor has also benefited from briefings conducted by Natural Resources Canada, the Department of Foreign Affairs and International Trade (DFAIT), Export Development Canada and the Canadian International Development Agency (CIDA). The Counsellor is grateful to all who shared their time, views and expertise. The Counsellor also expresses her appreciation to the Ryerson Institute for the Study of Corporate Social Responsibility at the Ted Rogers School of Management at Ryerson University for convening three legal experts workshops.

A multiperspective approach has proved invaluable in ensuring a more complete understanding of the range of issues, current and emerging, in this complex and often contentious space. This report shares some of the key learnings from those conversations, and from two other key activities undertaken in the Counsellor's first year, benchmarking and desk research.

Background

In March 2009, the Government of Canada announced its Corporate Social Responsibility (CSR) Strategy for the international extractive sector, *Building the Canadian Advantage: a CSR Strategy for the Canadian International Extractive Sector*. The CSR Strategy is led by DFAIT, and supported by Natural Resources Canada and CIDA. The purpose of the strategy is to enhance the CSR performance of Canadian mining, oil, and gas companies in their overseas operations. Done well, CSR helps companies meet increasing expectations from a variety of stakeholders. Done well, it can reduce negative impacts from projects, reduce project risk, build reputation, support the social license to operate, increase community benefits from projects, maximize the potential benefits of resource exploitation, and reduce harm. CSR standards are intended to supplement, never supplant, host country laws and regulations.

Good CSR outcomes, it should be noted, will depend on much more than what companies do, and as such, a multifaceted approach to the issues of CSR and extractives is critical in order to achieve positive results on the ground.

This recent Government of Canada CSR Strategy builds on and complements other initiatives, some of which pre-date the CSR Strategy. On issues related to host-country

governance, for example, Canada supports, among other initiatives, the Extractive Industries Transparency Initiative, the Secretariat for the Intergovernmental Forum on Mining and Sustainable Development, Canadian criminal penalties for corruption of foreign public officials, and the Peru-Canada Mineral Resources Reform Project (PERCAN) partnership in Peru. In its role as an EITI supporting country, for instance, Canada helps to promote more effective resource revenue management by providing policy advice and technical assistance to host country governments. Canada also supports the EITI Multi-Donor Trust Fund, and currently Canada represents the Non-European constituency on the EITI Board. The EITI's objectives of transparency and accountability are consistent with Canada's official development assistance programs that focus on strengthening democratic governance and strengthening the contribution of the private sector to poverty reduction.

A short CSR retrospective

The CSR conversation in Canada today has deep roots. Canada has played an important role in the global sustainability dialogue for some time. Conversations today reflect a continuation of a global discourse that began more than 20 years ago with the Brundtland Commission on Sustainable Development. In the wake of the Commission and the subsequent Rio Summit in 1992, Canada established the National Round Table on the Environment and the Economy, created the International Institute on Sustainable Development in Winnipeg, drafted principles for consensus-based sustainability approaches, organized an early multistakeholder workshop in Lima, Peru on mining and sustainable development, played a founding role in the creation of the International Council on Mining and the Environment in Ottawa, and played host to the Global Mining Initiative multistakeholder conference in Toronto, which led to the creation of the International Council on Mining and Metals.

The sustainability conversation in part reflects changes in the broad social consensus about the role of business in society. It is this consensus upon which the social contract for business is based. Whereas negative externalities – pollution, environmental degradation, social dislocation, poor working conditions – would have once been accepted as society's responsibilities, expectations have changed. Such externalities are now the responsibility of the company. And this social consensus about the role of business in society is in constant flux. Companies in all industry sectors must understand the implications and risks and opportunities inherent in this changing social dialogue. Because legislative and regulatory requirements can lag changing social norms – sometimes by a significant time and space dimension – many industry sectors have responded in the past dozen years with “Non State Market Driven” (NSMD) approaches, such as Responsible Care for the chemical sector; the Forestry Stewardship Council; the Marine Stewardship Council; and SA8000 for socially responsible employment practices.

Some key Canadian milestones:

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| 1986 | Noranda drafts its Environmental Policy Statement |
| 1991 | Establishment of International Council on Mining and the Environment (ICME) in Ottawa |
| 1992 | Creation of the International Institute for Sustainable Development (IISD) in Winnipeg |
| 1993 | Whitehorse Mining Initiative |
| 1998 | ICME Sustainable Development Charter launched |
| 1998 | The Global Mining Initiative launched under Canadian leadership |
| 1998 | Placer Dome sustainable development policy framework published |
| 1998 | Canada convenes a multistakeholder conference on mining and sustainable development in Lima, Peru |
| 2000 | Launch of the Mining, Minerals and Sustainable Development (MMSD) project |
| 2000 | Publication of the Fowler Report on conflict diamonds |
| 2001 | International Council on Mining and Metals established |
| 2002 | MMSD wraps up work with a major multistakeholder conference in Toronto |
| 2003 | Kimberley Process certification scheme for conflict diamonds established with Canadian leadership |

From this more general “sustainability” conversation, increasing Canadian focus in recent years has been paid to the particular challenges of extractive industries, as capital intensive industries with large environmental and social footprints. Again, these conversations go back more than 20 years. Most recent activities include the 2005 report of the Standing Committee on Foreign Affairs and International Trade (SCFAIT), *Mining in Developing Countries and Corporate Social Responsibility*, the 2005 Government of Canada response to that report, the subsequent 2006 launch of the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries (“Roundtables”), the Roundtables advisory group report in 2007, and the 2009 Government of Canada CSR Strategy. All these undertakings have in common a desire to generate ideas “on ways to strengthen the CSR performance of the extractive sector,” sometimes with a particular focus on developing countries.

Although the members of the Roundtables advisory group acted in their personal capacity, not as representatives of any organization or stakeholder group, the recommendations contained in their final report have had significant influence over the public discourse in the intervening years. The advisory group report included the following elements for

strengthening CSR performance, elements which continue to resonate: standards, incentives, assistance, monitoring/dispute resolution, and host country capacity building.

The main themes underlying the Canadian approach have been quite consistent over time. First, there is universal recognition that more can be done to strengthen Canadian corporate support for, and improved implementation of, CSR guidelines. Working with companies to improve performance is widely recognized as “more productive than non-engagement.” This underscores the importance of cross-sector partnerships in achieving results. Improving CSR outcomes is, as the Roundtables advisory group report pointed out, a “shared responsibility.” Second, it is understood that improving corporate practice is a necessary but not sufficient condition for improving outcomes. Effective improvement in CSR must be in the context of host country regulation and capacity building, as significant beneficial impact and critical decision-making authority rest there. Sound domestic laws remain the bedrock for responsible resource exploitation and management. While natural resources can build an economy, “the single most important factor is the transparency and effectiveness of a host country’s resource governance and management regimes.” The Government of Canada has articulated its expectation that Canadian companies respect local laws even where and when those laws are not universally enforced. However, solid regulatory frameworks and enforcement capacity are critical to ensure that all companies, no matter their origin, meet high operating standards and protect environments and project affected communities. Third, in order to maximize impact and build global support for innovative practice, Canadian initiatives in the area of responsible resource management are better undertaken in concert with others – like-minded governments, civil society, international organizations, think tanks, etc. This type of approach is reflected in Canada’s support for the Voluntary Principles on Security and Human Rights, the Kimberley Process, the EITI, the UN Special Representative on the issue of human rights and transnational corporations and other business enterprises, the Intergovernmental Forum, OECD Guidance for Responsible Supply Chains of minerals from conflict-affected areas, among other global initiatives. Finally, voluntary undertakings are recognized as effective in enhancing performance, reflecting and respecting the tremendous variety of contexts overseas. CSR standards are designed to go beyond legal requirements and therefore need flexibility in how they are incorporated into business operations. In its response to the SCFAIT report, the Government of Canada noted that “the government does not agree with the Committee’s recommendation that the human rights aspect of the [OECD] Guidelines should be made obligatory and that NCPs [National Contact Points] should work toward establishing common rules of evidence...The non-binding nature of the Guidelines has significantly increased the ability of like-minded governments to build greater international support for them than would have been possible to achieve if the Guidelines were an obligatory instrument.”

What’s new in the CSR Strategy?

Broadly speaking, the CSR Strategy is designed to help Canadian mining, oil and gas companies meet their social and environmental responsibilities when operating abroad. One of its goals is to help ensure that extractive operations minimize negative impacts while enhancing positive benefits to local communities.

This Strategy applies to any Canadian mining, oil or gas company in its overseas operations, whether publicly or privately held, whether funded by debt or equity.

The government's CSR Strategy is based on four integrated and complementary elements:

- *Support for host-country capacity-building initiatives related to resource governance.* This includes a variety of undertakings by CIDA, DFAIT and Natural Resources Canada. One initiative supported by Canada is the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, which acts as a forum for interested governments to address a wide variety of issues facing the mining, minerals and metals sector, including the equitable distribution of the economic and social benefits from mining and environmental protection during mine closures and rehabilitation. Over forty governments are members of the Forum, including many developing countries.
- *Support for CSR Performance Guidelines and Reporting.* Canada has long supported the OECD Guidelines for Multinational Enterprises, recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. More than a decade ago, Canada established a National Contact Point (NCP). The mandate of the NCP is to raise awareness of the OECD Guidelines and resolve disputes related to the Guidelines. The CSR Strategy provides new guidance for mining, oil and gas companies operating outside Canada by adding the IFC Performance Standards, the Voluntary Principles on Security and Human Rights, and the Global Reporting Initiative to the list of endorsed performance guidelines.
- *Support for the development of a Corporate Social Responsibility Centre for Excellence* to develop and disseminate high-quality corporate social responsibility tools and training to stakeholders. The CSR Centre for Excellence was formally launched in January 2010, with a secretariat housed inside the Canadian Institute of Mining, Metallurgy and Petroleum (CIM), the leading technical society of professionals associated with the Canadian minerals and materials industry. The Centre has a multi-stakeholder Executive Committee, co-chaired by representatives from industry and civil society, and has established subcommittees to guide its work.
- *Creation of the Office of the Extractive Sector Corporate Social Responsibility Counsellor* to assist in the effective and impartial resolution of issues pertaining to the activities of Canadian companies abroad and to advise stakeholders on the implementation of the endorsed performance guidelines.

The Office of the Extractive Sector CSR Counsellor

The Office of the Extractive Sector CSR Counsellor is part of the Government of Canada CSR Strategy. The Counsellor reports to, and acts as a special advisor to, the Minister of International Trade. The Counsellor may make recommendations to parties and provide advice; however, the Office is non-partisan and does not have any policy-making role.

The mandate of the Office flows from the Order-in-Council which created the position of the CSR Counsellor. The Office forms only one pillar of the four pillar strategy, and works closely with DFAIT, CIDA, Natural Resources Canada and the CSR Centre for Excellence. The Office's success is closely tied to the success of the overall strategy.

The first Counsellor was appointed in October 2009 and took up her three year mandate on October 19, 2009. The Office was formally opened on March 8, 2010 in Toronto and staffed with a senior advisor and administrative assistant during the subsequent months.

Some key dates in the evolution of the Office in its first year October 2009-October 2010:

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| 19 October 2009 | Counsellor's appointment takes effect |
| October 2009 | Cross-sector outreach and engagement begins |
| January – March 2010 | Benchmarking exercise |
| February 2010-April 2010 | Construction of framework for consultations on the review process |
| 8 March 2010 | Office opened in Toronto |
| March – July 2010 | Office staffed with a senior advisor and administrative assistant |
| 1 April 2010 | Office's website launched |
| May 2010 | Draft rules of procedure posted on website |
| June 2010 | Issues paper posted on website |
| 7 June – 15 August 2010 | Formal public consultations on review mechanism |
| September 2010 | Consultations summary report posted on website |
| 20 September 2010 | Revised rules of procedure approved by the Minister of International Trade |
| 20 October 2010 | Process formally launched after a 30 day implementation period |

The Counsellor's mandate is two-fold: to review CSR practices of Canadian companies operating outside of Canada, and to advise stakeholders on the implementation of the endorsed performance standards. The Office's goal is to improve CSR results on-the-ground through the review mechanism and through enhanced use of performance standards.

The review mandate of the Office is carried out in the context of a dispute resolution mechanism called the Review Process. The objective of the Review Process is to foster dialogue and to create constructive paths forward for the parties.

In fulfilling the review portion of the mandate, the Office is an impartial advisor and facilitator, an honest broker that brings parties together to help address problems and disputes. The Office creates a safe space for constructive dialogue and problem solving. This approach is based on the view that a credible, impartial and transparent process with appropriate checks-and-balances may find win/win options to resolve disputes.

Requests for review may be brought to the Office by individuals, groups or communities who wish to raise issues regarding the overseas activities of Canadian mining, oil, and gas companies. The issues must relate to the endorsed performance guidelines in the Government of Canada's CSR strategy – the IFC Performance Standards, the Voluntary Principles on Security and Human Rights, and the Global Reporting Initiative.¹ Canadian mining, oil, and gas companies who believe they are the subject of unfounded allegations concerning their overseas corporate activities may also bring requests for review to the Office.

In fulfilling its advisory mandate, the Office will aim to inform the public conversation on these issues. It is a non-partisan office with no policy making authority. Its role is to advise in the public interest. Activities will include raising awareness of the endorsed performance standards, enhancing the understanding of interpretation and implementation challenges and best practices, and disseminating lessons learned.

The expectation is that both elements of the mandate will improve CSR performance and create positive change on the ground – either through the Review Process, or through more systematic and robust application of best practices.

Canadian industries in global perspective

As a country built on natural resources, the mining, oil, and gas sectors have a high profile in Canada. Canadians benefit tremendously from the strength of the resource sectors. Not simply in terms of direct and significant contributions to jobs, tax revenue and GDP – between them generating nearly 10% of Canadian GDP and hundreds of thousands of direct jobs – but also through indirect employment and wealth creation. Thousands of downstream companies provide inputs to the sectors. Recently, with the objective of becoming one of the world's leading financial centres, the City of Toronto established the priority of entrenching “Canada's position as the leading global hub for mining, metals, and energy financing and trading.”

Mining, oil, and gas industries are also one of Canada's most global businesses, particularly when one looks beyond our economic relationship with the United States. Doing business abroad is not always the same as doing business in Canada. Some countries are only recently emerging from conflict; others remain fragile in terms of governance and government. Overcoming weak governance has long been recognized by the Canadian government and others as a critical success factor in responsible resource exploitation. Corporate CSR practice is a necessary but not sufficient condition to ensure positive outcomes.

¹ Issues related to the OECD Guidelines for Multinational Enterprises continue to be directed to Canada's National Contact Point.

“...weak governance is the most significant barrier to ensuring that business operations in developing countries maximize positive developmental results and mitigate any negative impacts...”

October 2005 Government of Canada Response to recommendations made by the Fourteenth Report of the Standing Committee on Foreign Affairs and International Trade

But it is by no means sufficient to simply wait for robust host country regulatory and legal frameworks to develop. For many countries, struggling with significant levels of poverty and unemployment, the human urgency is great, and attracting direct foreign investment is a key development policy priority. And for some, resource exploitation is one area of competitive advantage. Consider Burkina Faso, one of the poorest countries in the world. Annual per capita income is around \$580, and the country ranks 161st of 169 countries in the Human Development Index. The government is actively vying, as are many others, for foreign investment into its resource sector, since projects often depend on an infusion of foreign capital and expertise. The high capital investments required can be game-changers for the states involved, and provide tremendous opportunities to raise living standards. Between 1990 and 2000, foreign direct investment (FDI) inflows to Burkina Faso averaged \$9MM USD per year. Official development assistance from Canada amounts to about \$29MM per annum. Yet, only a few months after the first gold mine went into production in Burkina Faso, the Canadian mining industry now has over one billion dollars invested in the country.

A rapidly changing global context

Globally, mining, oil and gas industries have undergone a sea change in recent years, underpinned by three important changes in their strategic operating environments. First, the rising demand for resources; second, the expansion of exploration into previously closed areas; finally, the changes in social context.

Perhaps one of the most influential changes has been on the demand side – skyrocketing demand from developing markets, emerging from poverty, generating significant new pressure for resources to fuel development. In the span of the first decade of the 21st century, China became the world’s largest consumer of many key commodities, and now accounts for approximately 35% of the world’s total consumption of natural resources. Adding to the geopolitical dynamic is the technological revolution, which has created a wealth of new consumer electronics, a surge in “green technologies” and recent interest in clean technologies – electric cars, renewable energy, recycling, and so on, all requiring resources.

This increasing demand, coupled with the long lead times required to bring successful exploration projects to the operation stage, (projects can take 10 or more years to come to fruition) have resulted in record high prices for many resources. After significant price turmoil in 2009/2010, many prices have bounced back to historic highs, in turn making economic projects that previously were not.

Which brings us to the second significant change, on the supply side. Fueled by demand for resources and high commodity prices, exploration activity has boomed. As just one indicator, global equity financing for mining has skyrocketed from about \$3.2 billion in

2000 to nearly \$66 billion in 2009, enhancing the ability of companies to finance both exploration and operations.

Canada's investment in mining in Latin America and Africa is illustrative of this trend. According to Natural Resources Canada, the stock of Canadian investment in mining in Africa has grown from \$3.4 billion in 2002 to \$20.1 billion in 2009. In Latin America, Canadian investment in mining has increased from \$8.4 billion in 2002 to \$56.1 billion in 2009.

The end of the Cold War opened global trade and investment, and has allowed the search for resources to expand into remote or previously closed geographical areas. Some are previously unexplored regions; some have been exploited by state-owned companies or artisanal miners; some have harmful environmental and social legacies. Canadian companies may find themselves in countries where the experience with modern mining is limited, or possibly non-existent. States actively pursue foreign direct investment in their resource sectors, especially as foreign direct investment and export revenue now significantly dwarf direct development aid. For Africa alone, the \$40 billion in annual official development assistance is overshadowed by the \$400 billion in export revenue generated by mining, oil and gas industries. Evidence suggests this trend is on the upswing. The number of mining dependent countries, defined by United Nations Conference on Trade and Development (UNCTAD) as states where mining represents more than 25% of total exports, is on the rise, increasing from 33 mining dependent countries to 41 in recent years. These countries seek the benefits from resource exploitation potentially found in export revenue, government income, jobs, technology transfer, and infrastructure. But such projects have large negative impacts as well, and significant long term risks that must be effectively regulated, managed and controlled. As a result, host governments seek assistance on regulatory and revenue structures to support responsible resource exploitation and management. Many countries are striving to enhance capacity to more adequately safeguard environmentally sensitive areas or project-affected communities. Communities continue to experience few direct benefits from projects, while bearing many of the serious negative effects and long term risks.

Finally, the third significant change in the global operating environment reflects changing social norms and the rise of social media. The social contract has changed for Canadian extractive sector companies. The increasingly active global conversation suggests rising public expectations and evolution in the notions of sustainable development and social license to operate. As a result, a Canadian company must no longer assume that securing a legal license or permit is sufficient. The social license is indispensable, and increasingly so. Few legal permits can withstand the withdrawal of social support. Calls for further transparency and accountability are likely.

Canadian leadership

Canadians have expressed a desire to ensure that the practices and behaviours of Canada's private actors maintain, indeed enhance, Canada's reputation for environmental and social stewardship. A vibrant Canadian resource sector for the 21st century – attracting top talent, securing finance, becoming the investor of choice overseas – should continue to embrace corporate social responsibility leadership and drive best practice. Canadian resource companies have an interest in securing and maintaining their social license to

operate and in effectively managing their social and environmental risks. The industry is a critical partner in performance improvement.

Significant, concrete gains have been realized in recent years. Pioneering efforts created the landscape we see in Canada today: one in which many more avenues for effective dialogue and partnership exist. Canadian voices have played a leadership role in advancing both the policy and the practice of CSR. Path-breaking ideas incubated twenty years ago by the Whitehorse Mining Initiative, during the creation of the Kimberley Process, or more recently by the National Roundtables on CSR and the Canadian Extractive Industry in Developing Countries, are now, for instance, tangibly reflected in the multidisciplinary steering committee of the new CSR Centre for Excellence or in the Community of Interest Advisory Panel of the Mining Association of Canada's Towards Sustainable Mining initiative.

Canadian and international civil society groups, working with project affected communities, bring crucial knowledge of local realities and complexities and remain key voices in the ongoing dialogue and in the search for solutions. Civil society organizations have been instrumental in raising awareness of these issues, providing context, actively participating in national discussions, moving the thinking within industry, constructing creative ideas for a path forward. Theirs has been an important role in driving change and increased recognition of the issues faced by communities. We must acknowledge not only the seriousness of these issues in project-affected communities, but also the deeply personal nature of some of these problems.

Mining, oil, and gas industries have demonstrated a willingness to listen and to understand social and environmental problems and have made progress in meeting those challenges. In 2004, the Mining Association of Canada (MAC) launched the Towards Sustainable Mining (TSM) initiative, in order to improve the industry's performance by aligning its actions with the priorities and values of Canadians. The program is mandatory for MAC members, and includes independent verification of a range of continuously expanding environmental and social indicators. The Mining Association of Canada remains the only national mining association to have mandatory standards for members. In 1974, with the creation of the United Nations Environmental Program, the global oil and gas industry formed the International Petroleum Industry Environmental Conversation Association (IPIECA), today a wide-ranging industry association for environmental and social issues. IPIECA helps the oil and gas sectors improve environmental and social performance by developing good practices, enhancing and communicating knowledge, engaging industry, and developing partnerships with others. Under the leadership of the Prospectors and Developers Association of Canada, the exploration side of the mining business has established a specific set of CSR standards suitable for exploration companies, called E3Plus. Five years ago, executive level CSR positions would have been rare; today they are the norm. The next trend appears to be board-level CSR policy leads. The largest industry gatherings in Canada scheduled for 2011 – the PDAC Convention in Toronto and the CIM Convention in Montreal – have both built dedicated CSR streams. These and other undertakings demonstrate an industry commitment that goes well beyond symbolic gestures.

None of this is meant to suggest that we have resolved the significant challenges that come with responsible resource exploitation. But it does suggest a solid consensus as to the importance of strengthening the corporate social responsibility programs and outcomes of Canadian extractive industries, that oversight of Canadian extractive operations is both appropriate and desirable, and that continuous improvement is necessary.

What can Canada offer to the global dialogue?

Canada has significant learnings to share with the world on issues of responsible resource management, although all stakeholders, industry included, concur that it still has much to improve and therefore benefits from continued global exchange. Canada has managed to make its resource sectors a vector for development of the general economy. Canadians have built a strong, economically rich country on the back of resource development. Canada has a complex, multilayer and multiparty regulatory system, backed up by decades of experience, technical innovation, capacity building and significant government investments. Canadians have demonstrated leadership and global expertise on explosives safety, development of robust regulatory frameworks and evolving mining acts, worker health and safety, multistakeholder dialogues, and more recently, aboriginal relations and impact benefit agreements.

Canada is a major player in the global resource sectors. Our investment presence overseas is significant, particularly when compared to other Canadian industries abroad. According to the Prospectors and Developers Association of Canada, of the 1,970 mining companies recently tabulated, 1,116 of them – roughly 57% – have a headquarters in Canada. However, 97% of these headquarters belong to junior companies, primarily in the business of exploration, the vast majority of which will never own or operate an actual mine. While the practices of exploration companies can influence the general perception of the industry and affect the social license of any eventual project, the mining and metals sector is dominated by a much smaller set of much larger players. The largest 150 corporations account for over 80% of global production.

When it comes to operating companies in both mining and oil and gas, Canadians are relatively smaller players. In the global mining industry, Canada has two companies in the top 10 list of largest companies – Barrick Gold and Potash Corporation. Of the world's forty largest mining companies, Canada hosts a total of nine. In the oil and gas sector, where state-owned companies dominate, Canadian rankings are slimmer. According to *Petroleum Intelligence Weekly*, using 2007 data, Canada had two oil and gas companies among the world's fifty largest – EnCana ranking 34 and Canadian Natural Resources ranking 39. By a different measure, ranked by 2009 oil equivalent reserves only, Canada had no companies among the top 25 largest, and five in the top 50 largest: Suncor Energy Inc., Canadian Natural Resources, EnCana Corporation, Canadian Oil Sands Trust and Talisman Energy.

Finally, a word about equity financing. Because junior companies usually have no revenue stream they are not typically bankable. Private placements and public equity offerings remain the most important sources of financing for exploration. The TSX group remains the dominant global source of critical equity financing for the mining industry, with some 10,000 projects falling under TSX or TSX-V listed companies, of which approximately 50% are outside of Canada. But just as Canadian companies trade on the New York Stock Exchange, or on the London FTSE, TSX-group listed companies are not necessarily Canadian. The TSX group is increasingly attracting international listings.

Our relative positioning underscores the importance of working with others. While Canadian leadership is important, Canadian actions and influence may be significantly enhanced if we continue to participate in global frameworks, strengthen global standards and support key global initiatives. And since these industry sectors experience a high degree of mergers and acquisitions, such collaborative work will also help ensure that

global standards are raised by all and that communities will continue to benefit from high standards even in the event of a project buyout by a non-Canadian entity.

Performance standards

Why standards?

Extractive industries are complex and generate both potential large benefits and potential serious negative and long-term impacts. In some jurisdictions, regulatory, environmental and legal frameworks may not yet be robust enough to deal with these complexities. But even where such legislation is well developed, social norms are moving much faster than the law. This gap between social expectations and legal realities, the gap between what societies expect of business and what the law requires of them, represents both significant risk and opportunity for business.

Even when legal and regulatory frameworks are robust and well enforced, securing the social license to operate is not an option for Canadian companies. Governments can change the rules in response to social pressures. Thus, the need for standards as a tool to assist companies in meeting rising social expectations.

While often derided as “voluntary,” global CSR standards are perhaps better described as “flexible” and deliberately so. As soft law instruments, meant to supplement hard law, they must be able to operate in thousands of contexts and under many varying legal regimes. They are not expected to apply in all situations in all circumstances. They are not compliance tools.

Voluntary standards are neither “better” nor “worse” than legislation – they perform a different function, going beyond what the law requires. Standards are one way to bridge governance gaps and enhance responsiveness and accountability. They are not meant to supplant a robust regulatory or legal framework. But their evolution acknowledges that in today’s global society, social norms often move faster than the law.

Standards recognize two critical factors for Canadian extractive industries. One, that the social license is essential. The loss of the social license represents a significant, material risk to the ongoing ability of a Canadian company to extract the resource. If the social tide moves against it, it cannot simply pack up and move across the border. Oil, mining and gas companies have a critical business interest in corporate social responsibility initiatives as one aspect of securing this social license. And secondly, that legal and regulatory frameworks, anywhere and at any time, may not accurately reflect social norms. Social norms changes are rapid, evolutionary and constant. Laws may simply not keep up. Organizations are now looking for ways to go well beyond the law – well beyond compliance – to meet social expectations and secure the social license.

There is now no shortage of standards to help companies meet emerging social expectations. Standards frame priorities and allow companies to design management practice. Standards set a theory which must then be put into practice. The real rubber hits the road with implementation and interpretation.

In establishing the CSR Strategy, the Government of Canada, building upon its long-standing commitment to the OECD Guidelines for Multinational Enterprises, added its endorsement to three other widely recognized global frameworks: the Voluntary Principles on Security and Human Rights, the Global Reporting Initiative and the International Finance Corporation's Performance Standards.

Just as with the OECD Guidelines for Multinational Enterprises, these recently endorsed Standards are not owned by Canada. They reflect global best practice and consensus, and interestingly, their diverse governance and organizational structures reflect the entrepreneurial nature of global standards.

Global Reporting Initiative (GRI) – a multistakeholder not-for-profit organization using a network based approach

Founded in the late 1990s, the Global Reporting Initiative (GRI) is a network-based not-for-profit organization that has developed the world's most widely used sustainability reporting framework. The GRI's vision is that disclosure on economic, environmental, and social performance becomes as commonplace as financial reporting.

By providing concrete guidance on principles and indicators, the GRI's Sustainability Reporting Framework creates a tool for public reporting of sustainability performance. The principles include materiality, stakeholder inclusiveness, comparability, and timeliness. The Framework is applicable to organizations of any size and type, (corporate, public, NGOs, etc.), anywhere in the world. It facilitates transparency and accountability by organizations and provides stakeholders with a universally-applicable, comparable framework from which to understand disclosed information.

The original GRI reporting framework was developed and then significantly revamped through an open, inclusive, and consensus-seeking process with global participants from business, civil society, labour, and professional institutions to ensure a high degree of technical quality, credibility, and relevance. The third iteration of the framework, known as G3, was released in 2006, and a new review is slated to launch this year.

Recognizing unique parameters exist, the GRI has also developed sector supplements, using that same multistakeholder, consensus approach, capturing unique sustainability challenges for different types of organizations. At time of writing, the sector supplement for oil and gas was under construction. The sector supplement for mining and metals was launched in March 2010. Other sector supplements include media, apparel and footwear, food processing, automotive, banking, and NGOs. For extractive industries, the supplements address more specific issues such as emissions, land and environmental management, labour, programs to assist revenue management, Indigenous rights, resettlement, community and stakeholder engagement, and transparency initiatives. Protocols are the "recipe" behind each indicator in the Guidelines and include definitions for key terms in the indicator, compilation methodologies, intended scope of the indicator, and other technical references.

IFC Performance Standards – created by the private sector lending arm of the World Bank

The International Finance Corporation (IFC) is the private sector lending arm of the World Bank. The IFC developed standards in 2006 to better manage social and environmental risks in its lending portfolio.²

The IFC Performance Standards on Social and Environmental Sustainability define a borrower's roles and responsibilities for managing projects and the requirements for receiving and retaining IFC support. The Performance Standards are part of a larger sustainability framework which includes the Policy and Performance Standards on Social and Environmental Sustainability (with accompanying guidance notes), the Policy on Disclosure, and the World Bank Group Environment, Health and Safety Guidelines. The IFC applies the Policy and Performance Standards to minimize project impacts on the environment, on affected communities and to put into practice its commitment to social and environmental sustainability. Each project is assessed and depending on the context and risk, certain of the standards are deemed applicable. Not every standard will apply to any particular project. The IFC expects clients to work to meet the guidelines over time.

The IFC produces additional material for each performance standard to assist with implementation. Each of the eight Performance Standards is accompanied by a fulsome set of Guidance Notes, providing further direction to clients and IFC staff in fulfilling their roles and responsibilities under the standards. Additional material includes Good Practice Notes, including one on Addressing Grievances from Project-Affected Communities, Toolkits, as well as General Guidelines (such as Environmental, Health, and Safety Guidelines) which can be applicable to all the standards.

At time of writing, the IFC Standards were undergoing a comprehensive review.

For projects supported by the International Finance Corporation, or the Multilateral Investment Guarantee Agency (MIGA), project-affected communities have access to the World Bank's Compliance Advisor Ombudsman (CAO), a recourse mechanism in place since 1999. The CAO works to address concerns of individuals or communities affected by IFC/MIGA projects, to enhance the social and environmental outcomes of projects, and to foster greater accountability for the IFC or MIGA.

The Voluntary Principles – a multistakeholder organization, established by the UK and US Governments

Security around extractive sector projects can be controversial and problematic. In December 2000, the UK and US governments announced the creation of the Voluntary Principles on Security and Human Rights (VPs), designed specifically as guidance for the extractive industries on maintaining the safety and security of operations while ensuring respect for human rights. Again, the process of constructing the Principles was multistakeholder, incorporating input from the extractive industry as well as human rights organizations, as the guidelines aimed to be consistent with international standards on human rights.

² The Equator Principles which now apply to commercial project lending were based closely on the IFC Performance Standards.

The VPs help companies conduct assessments of human rights risks associated with security, engage appropriately with public and private security in conflict-prone areas, institute proactive human rights screenings of and trainings for public and private security forces, ensuring the use of force is proportional and lawful, and develop systems for reporting and investigating allegations of human rights abuses.

The six “voluntary principles” are:

- Acknowledging that security is a fundamental need and that security and respect for human rights can and must be pursued in tandem
- Understanding that governments have the primary responsibility to promote and protect human rights, but that all have a shared goal of promotion of human rights
- While recognizing the importance of safeguarding the integrity of company personnel and property, companies agree to operate to the highest global standards
- Taking note of the effect that companies’ activities may have on local communities and encouraging engagement with communities
- Understanding that useful, credible information is a vital component of security and human rights and that sharing information among a variety of stakeholders is critical
- Acknowledging that host countries may seek assistance from other governments or agencies in supporting security sector reform internally, and that companies and civil society organizations have important roles to play to support this capacity building.

In January 2006, a five year review captured corporate experiences – successes, lessons learned and challenges – associated with implementing the Principles. In May 2007, as a result of growing membership, formal participation criteria for companies, NGOs, and governments were adopted. Canada will assume the Chair of the Steering Committee in March 2011. New members must be approved by all VP participants. Current Canadian corporate members are Talisman Energy Ltd. and Barrick Gold. At time of writing, no Canadian NGOs were members. International NGO membership includes Amnesty International, Search for Common Ground, International Alert, Oxfam and Human Rights Watch.

On the learning curve

Standards and guidelines may have increasing effect over time, especially if they get wide-ranging traction.

An organization and its management must move through a continuum – from initial awareness of a guideline, to acceptance, to alignment of management practice, to the development of internal policy and procedures, including training, staff performance objectives, data collection, measurement and reporting. Many organizations will then want to improve practice over time. The definition of good practice guidance continuously changes based on experience, and thus the learning curve changes for others. All these endorsed guidelines are best conceived as work-in-progress, evolving with experience, and subject to periodic review. Progress overall has been relatively rapid – sustainability reporting for instance, has evolved from a marginal practice to a mainstream management and communications tool over the last ten years. The IFC Standards have gone global through the Equator Principles to now cover some 80% of private sector project financing.

But setting standards is just the beginning. Issues of CSR and extractive industries remain highly contested. A multiperspective method brings a balanced approach, but there are few easy answers. As standards are increasingly applied and interpreted, critical new issues arise. What is best practice for securing social license when a community is divided? What is best practice when the local authority requires something that the community is against? What should a company do if a community requests corporate involvement in an initiative but the host jurisdiction discourages such involvement? A standard is a useful tool to raise the performance bar over time, but it does not always provide ready answers to complex problems in the real world. Bridge-building conversations and partnering must continue in an effort to more effectively address difficult problems. Positive outcomes continue to depend on a CSR partnership between industry, governments and civil society.

The Office at year one

The first Extractive Sector CSR Counsellor, Marketa Evans, began her mandate on 19 October 2009. Her priorities in her first year were to more thoroughly understand the issues and environment for Canada's mining, oil and gas companies on the issues of CSR; to establish the Office infrastructure; to build the dispute resolution process; and to sharpen the Office's value proposition. In both elements of its mandate – review and advisory – the Office fits into a global constellation of CSR-related review mechanisms and advisory service providers.

Constructing a Review Process for Canadian mining, oil and gas operations overseas

An early priority was to construct a review process for the Canadian international extractive industries. After extensive consultations and benchmarking, the dispute resolution process was formally launched on 20 October 2010.

The dispute resolution process permits companies to be the subject of a review in the context of the endorsed performance standards as these existed on 20 October 2010. The Office's mandate is wide: any Canadian oil, gas or mining company, whether major or junior, publicly or privately held, whether funded through equity, debt or private placement, in any operations outside of Canada, can be the subject of a review. Canadian companies that believe they are the subject of unfounded allegations may also bring a request before the Office.

The process designed responds to stakeholder needs and interests. Well before the Office was formally opened, the Counsellor undertook wide-ranging outreach and engagement across all sectors, asking a basic question: given that the review process was voluntary for all sides, what had to be true in order to encourage participation? How should we best proceed? Three dominant interests emerged, consistent across Canadian stakeholder groups: a strong demand for a participatory process to establish the dispute resolution mechanism; interest in a more complete understanding of legal issues associated with the Office; and a desire for the focus of work to be on “visible progress” – positive change and improvement on-the-ground.

The first part of the mandate stipulates that the Office will review the CSR practices of the Canadian industry overseas. In constructing this process, we learned that while we were

constructing something new for Canada, it was not without important precedent and learnings from others.

To inform our approach, we undertook three key areas of activity over the past year:

- benchmarking and research of existing review mechanisms in an effort to understand global best practices and lessons learned;
- extensive consultations; and
- three legal experts workshops.

Based on our benchmarking, we learned what “review mechanisms” typically do:

Raise awareness of performance standards and operational best practice

Drive systemic performance improvement and prevention through proactive outreach, communications, reports, advisory services

Resolve issues through informal mediation, consultation, recommendations for action, agreements

Monitor and report on progress and implementation of action plans.

A. Benchmarking

Many other non-judicial review mechanisms exist, some with a decade or more of experience. These processes, include, for instance, project level grievance mechanisms, independent recourse processes of the international financial institutions (such as the World Bank’s Compliance Advisor Ombudsman), association frameworks such as those of the Mining Association of Canada or the International Council on Mining and Metals, the National Contact Points in OECD states, the Oxfam Australia Mining Ombudsman, international bodies such as the Inter-American Commission on Human Rights, host country institutions such as the Peruvian Ombudsman. A more complete listing can be found at www.baseswiki.org.

Global review mechanisms, such as those of the National Contact Points or the international financial institutions, have potentially the most in common with the Office. IFI mechanisms are similar because they typically strive for problem solving and prevention; but they are different because they apply only to borrowers (a narrower subset) and also may have an internal compliance audit function. NCPs are similar because they apply to all companies in a particular jurisdiction and because they have outreach, mediation and awareness raising functions, but only apply the OECD Guidelines for Multinational Enterprises.

The benchmarking exercise indicates that most mechanisms receive between one and two eligible requests per annum, and that it usually takes several months for the first request to come in. Resolutions can take many months, sometimes years.

One of the objectives of benchmarking was to understand what has worked and what has not. We distilled the central critiques of existing mechanisms into four main themes, each of which we set out to proactively address in constructing our process:

1. ineffective process –opaque decision-making, unclear timelines
2. poor outcomes – no visible positive change in attitude, practice or behaviour
3. weak infrastructure – poorly trained staff, with insufficient resources and political will
4. perceived bias – housed in the wrong place, unduly influenced by particular interests.

We also noted an emerging global consensus on best practices, which we detail in our final section.

B. Extensive consultations

The Counsellor took up her post on 19 October 2009 and immediately began meeting with interested parties across a wide range of sectors. These informal engagement opportunities shaped the formal public consultations on the construction of the review process, which began on 7 June 2010. Two documents were drafted in advance of the launch of formal consultations: an issues paper “Building a review process for the Canadian international extractive sector” (June 2010) and a draft set of rules of procedure for discussion (May 2010). These documents framed the consultations, identifying key stakeholder issues and emerging global good practices.

Why consult?

There are two main reasons these formal public consultations were undertaken. First, this process will have potentially significant impacts for some stakeholders. As such, it is appropriate to listen and respond to the issues and concerns raised by those it is likely to affect. As a voluntary problem solving process that will incur potential costs for all participants, the mechanism must create value for all its potential participants. The Office must understand how stakeholders from a variety of perspectives define that value.

In the construction of such a novel mechanism, taking into account the views of key stakeholder groups – particularly the intended users – was deemed to be of critical importance. And, in designing a dispute resolution system that must be adaptable to diverse cultural, social, economic and political realities, the views from international stakeholders were considered particularly important. More than one-third of the stakeholder input came from international participants.

Second, input from such conversations yields a better result – our consultations generated numerous options and ideas, many of which are directly reflected both in our general approach and in our rules of procedure. We believe we have built a better, more useful and usable process as a result of these consultations, but this is just the beginning: the Office is committed to continuous dialogue and learning.

What we did

Formal public consultations took place from 7 June until 15 August 2010. The Office proactively sought input from a wide range of perspectives, in a variety of ways:

1. formal day long workshops in Canada (Calgary, Ottawa, Montreal, Vancouver, Toronto)
2. formal meetings with four groups of stakeholders (industry, civil society, host country governments and Canadian government officials) in Mexico, Mali and Senegal
3. a 90 minute webinar
4. an invitation to provide written submissions

Over 300 individuals and organizations, from across a wide range of constituencies, directly participated in the public consultations. Overall, approximately 40% of total workshop participants were international. In Canada, over a third of participants came from industry, with another 25% from civil society. Overseas, industry and civil society participation was somewhat greater: over 45% from industry, more than 35% from civil society, with the balance from government or service sectors.

C. Legal experts workshops

In addition, and in response to strong across sector interest in understanding the legal implications of the process, the Counsellor is grateful to the Ryerson Institute for the Study of Corporate Social Responsibility for convening three half day workshops of legal experts, representing a range of perspectives. These workshops took place in May, June and August 2010.

The meetings were designed to further the Counsellor's understanding of the legal issues associated with the review mechanism, in the general context of the Office. These included legal issues for the Counsellor, for industry participants, for NGOs, for local community participants, for government participants; further, how all these issues might fit with the review mandate and rules of procedure was addressed.

Outcomes

The following reports were produced and are available on the Office's website:

Consultations Summary Report, September 2010

Public Consultation Senegal Report, September 2010

Public Consultation Toronto Report, August 2010

Public Consultation Montreal Report, August 2010

Public Consultation Vancouver Report, July 2010

Public Consultation Mali Report, July 2010

Public Consultation Ottawa Report, July 2010

Public Consultation Mexico Report, June 2010

Public Consultation Calgary Report, June 2010

Legal Issues Workshop Report, June 2010

Building a review process for the Canadian international extractive sector: A backgrounder, June 2010

In light of the consultations, the draft rules of procedure for the dispute resolution process were significantly revised, and were approved by the Minister of International Trade on 20 September 2010. After a 30-day implementation period, the review process of the Office was formally launched on 20 October 2010. The time required to construct the process compares very favorably with other mechanisms.

Complete information on accessing the review process is available on our website at www.international.gc.ca/csr-counsellor. Supporting documents include: information brochure, cover form, and the rules of procedure. A participant guide is forthcoming.

The public consultations also helped refine our key guiding principles, which reflect global best practice guidance. In alphabetical order they are:

Accessible: minimize barriers to entry to the process, and engage in pro-active outreach; keep “users” squarely in mind in our activities

Effective: foster the conditions for solutions and build trust between stakeholders, and create lasting, fair outcomes

Independent: adopt a balanced approach, being open to different perspectives on the problem without taking sides or pushing particular agendas

Predictable: ensure that processes have clear timelines and defined milestones, while recognizing that flexibility is also critical

Responsive: respond to stakeholders who have an interest in these issues, and to changing needs, circumstances and evolving external environment

Transparent: recognize a distinction between transparency of process and outcomes, which is to be encouraged and is deemed critical for the Office, and transparency of information, some of which may well need to be kept confidential in order to have the work proceed

Two important things to note about our principles: we recognize that they will often be in tension with each other, and so will require careful tradeoffs to be made. More accessibility for instance, may impinge on independence. Secondly, for a new office such as this one, without a proven track record, guiding principles are an important reference point for decision-making and for signaling to stakeholders. They are however, aspirational and should always be seen as such. We will work to improve our implementation of these principles over time.

The Review Process

Step 1: A Request for Review is submitted to the Office.

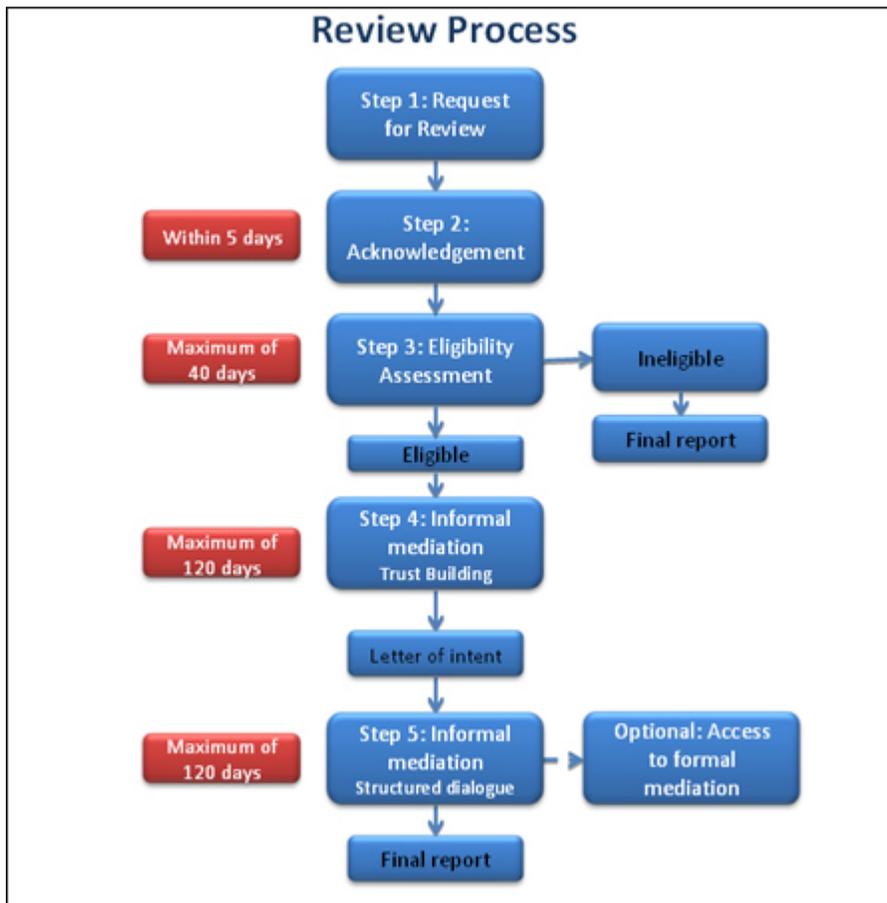
Step 2: The Office will send an acknowledgement to the person(s) making the Request.

Step 3: The Office will assess eligibility.

Step 4: The CSR Counsellor will work with the parties in building trust.

Step 5: The CSR Counsellor and the parties may engage in a structured dialogue. The parties might also work with a formal mediator outside of the Office to resolve any issues of concern.

The CSR Counsellor will write reports about requests for review, including final reports at the end of the process.



Vision and positioning

We have endeavoured to take a measured and collaborative approach to build the most useful process possible. We have validated with the core constituencies the need for a safe space for dialogue. Our vision is of a *balanced, pragmatic, flexible and solutions-oriented mechanism* which will provide one vehicle for communities and companies to come together and resolve issues.

An increasingly rich and innovative global dialogue has furthered the framing of non-judicial processes. Judicial and non-judicial mechanisms are typically not in competition with each other, indeed are complementary as they tend to serve different needs. In many instances, the use of judicial methods may be preferable. The outcome of a judicial process is powerful: enforceable, sanctioning, precedent setting. Because of their high profile, judicial cases can act as a deterrent on reputational and cost factors alone. Once settled, cases can effectively contribute to systemic, legal and regulatory change. Remedies can be significant and wide-ranging, imposing financial penalties, punitive measures, imprisonment.

But there is also dissatisfaction with legal remedies. In some instances, particularly where discretionary standards are the basis of corporate performance assessment, judicial mechanisms may be unavailable, too costly or too time consuming to be a viable avenue for dispute resolution. Legal recourse highlights inequalities between those who are well resourced and familiar with the formalities of the legal system, and those who may lack experience or funding, impinging on accessibility for those who may need it most. In our conversations with stakeholders, we heard that the courts can be an imperfect mechanism for project-affected communities. The high stakes nature of legal proceedings, and the very significant costs and time horizons which typically characterize them, may preclude timely change for communities. Under certain conditions, non-judicial mechanisms may offer a viable and credible alternative for constructive dispute resolution.

The use of this review process does not in any way preclude the use of judicial mechanisms by the parties at any time. Criminal activities, such as the corruption of foreign public officials, are dealt with more appropriately by law enforcement, and are therefore beyond the purview of this Office.

Looking Ahead

Over the past several months, the Office has built the foundations for its review mechanism, including the development and formalization of the rules of procedure. The process was officially launched on 20 October 2010.

The establishment of the review process was a key priority in the first year of the Counsellor's mandate. In looking ahead to the end of the current Counsellor's mandate in October 2012, additional important priorities have also been identified. The litmus test of success for this Office will be whether it can contribute to CSR improvements at the project level – either through the review process, or through proactive and enhanced use of the performance standards. We are focused on results, although we understand that the changes we seek will take many years to come to full fruition.

We expect to see our activities, in concert with others, *inter alia*, result in:

1. increasing awareness of this Office and of the CSR Strategy among companies, communities and other interested parties;
2. increasing number of companies aware of and implementing the endorsed performance guidelines, although not all those choosing to emulate the standards will become formal signatories;
3. increased awareness of best practices;
4. an increasing number of communities, companies and civil society organizations aware of the review mechanism;
5. a richer public dialogue and more opportunities for cross sector dialogue and partnerships;
6. improved Office capacity to respond to requests for review;
7. use of the review process.

Outreach and engagement

Although the Office does not have direct sanctioning power, it does carry authority and profile by virtue of its housing inside the Government of Canada. Its actions and words can have reputational impact - positive and negative. Reputation increasingly matters, both for industry and civil society. The Office's understanding of the issues can carry weight with stakeholders who look to it as a source of expertise. As a result, the Office must stay close to stakeholders, while retaining its ability to be balanced and neutral. The primary objective for the Office in its early years will be to establish and strengthen its ability to be a trusted convener and neutral party in what is often a very polarized space.

From the outset, our strategic approach has been proactively participatory and engaged and it will remain that way. The Office in both its mandates - review and advisory - is 'owned' by stakeholders. To that end, in the coming two years, our objective will be to move from consultations to dialogue with stakeholders, emphasizing continuous and mutual exchange of information.

The review mandate

Our benchmarking exercise, in addition to surfacing the critiques of existing processes, also identified the points of consensus across stakeholder groups on "good practices" for such mechanisms. We made solid use of those identified good practices in constructing our mechanism, and will continue to do so over the next two years. We also noted that many existing mechanisms receive a very high proportion of ineligible requests, highlighting the importance of proactive communication.

Global good practice #1: A focus on problem solving

Review mechanisms need to show results, not just create a process. Problem solving is therefore now an emerging best practice, even if in practice it remains difficult. Effective problem solving means not taking sides, not unilaterally designing solutions, but instead focusing on becoming a trusted convener, able to create space for constructive dialogue and joint action by the parties to resolve their issues. OECD Watch, an NGO umbrella group, has specifically highlighted the need for NCPs to contribute more actively to “meaningful and effective resolution of problems” and conflict resolution between companies and communities. Seriously “addressing concerns” of communities also means enhancing the participation of communities in any problem solving exercise.

Global good practice #2: Active knowledge management

A typical review mechanism may deal with one or two eligible cases per year. Broad-based CSR improvement thus means attention to proactive advisory functions and problem prevention. During the recent consultations on the Inter-American Development Bank (IADB) mechanism, for instance, prevention was repeatedly flagged as a key area for improvement. Advisory functions now include public reports on “best practice” guidance, gleaned from actual cases. The CAO Office has issued several in recent years including guides to *Designing and Implementing Grievance Mechanisms for Development Projects* and *Participatory Water Monitoring*.

Active knowledge management also means greater information sharing between these mechanisms and efforts to foster a global community of practice. The NCPs and the IFI mechanisms meet annually with their respective peers. OECD Watch recommends more such knowledge sharing.

Global good practice #3: Continuous process improvement

Emerging good practice, again as reflected in the recent evaluations of the European Bank of Reconstruction and Development (EBRD) and IADB mechanisms, as well as in revisions to the NCPs of the UK and Netherlands, places much greater emphasis on creating a solid but dynamic process that can incorporate new learnings. Good practice is characterized by transparent and fixed rules of procedure, established and published indicative time limits which are respected to the greatest extent possible, clear process stages and status updates, publication of results, public criteria for decision-making and a commitment to continuous improvement. Each case presents a new learning opportunity, one that can improve the process for next time.

Global good practice #4: External engagement

Review mechanisms are engaging with the outside world. From their initial internal focus much progress has been made in adding outside voices, whether through standing panels of experts called upon when needed, outreach events, external reference groups, open evaluation processes and peer review. Active engagement with communities, and fostering of local expertise and networks, is also emerging as a good practice. In order to ensure that local institutions are supported, rather than supplanted, increasing attention is being paid to community capacity to access locally available processes first if appropriate.

The advisory mandate

The Office will advise “in the public interest,” informing the public dialogue. The Office is non-partisan and does not take positions. The Office has no policy-making authority.

Our advisory role will be optimized by tightly focusing on the three recently endorsed performance standards. Activities will support raising general awareness of the endorsed performance standards, strategically enhancing the understanding of interpretation and implementation challenges and global best practices, extracting and disseminating lessons learned.

On the industry side, there remains work to be done to ensure corporate awareness of the endorsed standards, and on making the case for their use. However, many companies are now moving from the question of “why” CSR to “what” to do. Standards are helpful in designing management policy and procedures. Other companies are graduating from questions of “what” to do to “how” to raise performance. While standards are useful for setting objectives and expectations, difficult challenges of interpretation and implementation remain. Because CSR is a partnership, we interpret the relevant stakeholders in this agenda broadly, to include not only industry but also civil society, host country governments, Canadian missions, and so on. Improved ability to share views and challenges may assist with better performance. The Office’s objective will be to contribute to informed public discussion on the performance standards, and to foster creative thinking, relationship building and opportunities for dialogue and action among these stakeholders on their implementation.

Some activities for the Office in the coming months include:

Participant Guide: a detailed participant guide will launch, as a complement to the formal rules of procedure, offering more detailed guidance on accessing the review process, what to expect, what to provide.

Guide to the Standards: a “guide to the guidance” for each of the three newly endorsed standards. Guidance Notes will be short, and intended to flag important global best practice and toolkits for each of the IFC Performance Standards, the Voluntary Principles and the Global Reporting Initiative.

Learning workshops to continue to support knowledge sharing.

Advisory Panel to keep the Office grounded with stakeholders, and close to emerging issues and stakeholder concerns.

Appendix I

Biography of the Extractive Sector Corporate Social Responsibility Counsellor

Marketa D. Evans is the Government of Canada's Extractive Sector Corporate Social Responsibility Counsellor. The role of the Counsellor is to communicate the Government of Canada's expectations regarding corporate conduct, assist companies and stakeholders in the resolution of disputes related to the corporate conduct of Canadian extractive companies (mining, oil and gas) abroad, and assist with the implementation of CSR performance standards.

Dr. Evans spent ten years in senior management positions in the Canadian banking sector, and was Executive Director of the Munk Centre for International Studies, University of Toronto. Her research and teaching focused on the role of non-state actors in international development and on global corporate citizenship. She helped establish The Devonshire Initiative, a forum for partnership and dialogue between non-governmental organizations (NGOs) and the mining sector. Most recently, she was the Director, Strategic Partnerships, at Plan International Canada, one of the world's leading development NGOs. She has been a member of external advisory panels for Natural Resources Canada, the World Economic Forum, Transparency International Canada and several private mining companies.

Dr. Evans has been a frequent public commentator on issues of corporate social responsibility, cross sector partnership and the role of the private sector in international development. She holds a PhD in political science from the University of Toronto. She has completed Harvard University's Program on Negotiation and the Basics of Geology, Mining and Metallurgy course at Queen's University.

Appendix II

Office of the Extractive Sector CSR Counsellor Public outreach and activities list October 2009 – October 2010

2010

| | |
|---------------|--|
| October 13-14 | Implementing International Standards, Corporate Engagement Project workshop, Cambridge, MA |
| August 18 | Legal workshop # 3 at Ryerson Institute |
| August 5 | Public Consultation in Toronto |
| July 20 | Public Consultation in Vancouver |
| July 15-16 | Public Consultation in Senegal |
| July 12-13 | Public consultation in Mali |
| July 8 | Public Consultation in Montreal |
| July 6 | Public Webinar |
| June 23 | Legal workshop # 2 at Ryerson Institute |
| June 21 | Public Consultation in Ottawa |
| June 15-16 | Public Consultation in Mexico |
| June 7 | Public Consultation in Calgary |
| May 20 | NGO Roundtable, Ottawa |
| May 9-11 | CIM Conference, Vancouver |
| May 6 | Legal workshop # 1 at Ryerson Institute |
| March 26 | Industry Roundtable, Montreal |
| March 17 | Sydney CSR Workshop (by videoconference) |
| March 15 | Melbourne CSR Workshop (by videoconference) |
| March 11 | Transparency International Canada Symposium, Toronto |
| March 8 | Open House at new Office |
| March 6 | Mining, People, Environment Conference, Toronto |
| March 3 | Canadian Environmental Network workshop, Ottawa |
| March 1 | Ryerson University workshop Multiperspective case study method on CSR & extractives |
| Feb 18 | Industry Roundtable, Toronto |
| Feb 16 | NGO Roundtable, Toronto |
| February 5 | IDRC conference on The New Africa, Ottawa |
| January | TISA event, Toronto |
| January | Industry roundtable, Vancouver |

2009

| | |
|----------|--|
| December | IFC/DFAIT Roundtable, Toronto |
| December | Centre for Excellence webinar |
| December | CIM Hamilton Lecture, Toronto |
| December | Devonshire Initiative Workshop, Toronto |
| November | CSR Centre for Excellence 4 city meeting (webinar) |
| November | NGO briefing, Ottawa |
| November | UN Special Representative on Business & Human Rights workshop, Toronto |

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Legal Issues Workshop Report, June 2010

Building a review process for the Canadian international extractive sector: A backgrounder, June 2010

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