Meeting Summary Report

Third in a series of Canadian Workshops on

"Building a review process for the Canadian international extractive sector"

Montreal, Canada

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Report prepared by:

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Views expressed herein are those of the Office of the Extractive Sector CSR Counsellor.

August 2010

Canada

"Building a review process for the Canadian international extractive sector"

Montreal was the third in our series of public consultations in Canada on building a review process for the Canadian international extractive sector. It will be followed by:

July 20	***Vancouver***
August 5	***Toronto***

Background

The Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor was established in 2009 as part of the Government of Canada's CSR Strategy for the International Extractive Sector. Marketa Evans was appointed as the first Counsellor in October, 2009.

The Office will review CSR practices of Canadian companies operating outside of Canada and will advise stakeholders on the implementation of endorsed performance standards. In fulfilling the review mandate, the Office will act an impartial advisor and facilitator, an honest broker that brings parties together to help address problems and disputes. The Office will create 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.

Over the last six months, we have worked to formulate an action plan and develop tools to move this agenda forward. Extensive outreach and engagement across all sectors has revealed an encouraging level of support for the Office and interest in assisting in its construction. Three dominant themes emerged, consistent across Canadian stakeholder groups: a strong demand for a participatory process to establish the dispute resolution mechanism; a concern with legal issues associated with the Office; and a desire for the focus of work to be on "visible progress" – real change and improvement on-the-ground. This consultation process responds to the first of those three themes.

Additional information is contained in a backgrounder document "***Building a review process for the Canadian international extractive sector,***" available at
http://www.international.gc.ca/csr_counsellor-conseiller_rse/

Purpose of this Session:

The public consultation period runs from June – August 2010. The consultations are intended to inform the development of the dispute resolution process. More specifically, the Office of the CSR Counsellor is looking for:

1. comments on the draft rules of procedure available on the Counsellor's website
2. observations on guiding principles, as outlined in the Backgrounder document ***"Building a dispute resolution process for the Canadian international extractive sector"***
3. guidance on indicators of success

The session took place under the Chatham House rule, meaning that in order to encourage full and frank discussions, comments of participants are summarized in this document, but they are not

attributed. This report summarizes some of the key learnings and issues raised during the workshop conversation.

Introduction:

The third consultation took place in Montreal and attracted 12 participants from various stakeholder groups including civil society organizations, companies, and government representatives. It was a bilingual session.

The objective of the consultation was not to reach consensus on any of the key items on the agenda, but rather to ensure important issues, from a variety of perspectives, were surfaced. After a round of introductions, the meeting objectives were framed by the external facilitator, David Simpson.

The Counsellor, Marketa Evans, gave a short presentation to outline her progress and focus to date. She emphasized the need to ensure that as many views as possible were incorporated in this process. She discussed the Counsellor's mandate, highlighting that the dispute resolution process is voluntary for all parties. She noted that the performance standards in play include the IFC Performance Standards, the Voluntary Principles on Security and Human Rights, the Global Reporting Initiative and the OECD Guidelines for Multinational Enterprises. The Government of Canada's CSR Strategy for the international mining, oil and gas sectors stipulates that companies are "encouraged and expected" to adhere to such standards in their operations outside Canada. (Note that the review mechanism for the OECD Guidelines will continue to reside with the National Contact Point). She encouraged participants to provide written submissions following the workshop.

The establishment of the dispute resolution process has thus far been informed by three key reference points: the Counsellor's mandate, stakeholder voices as heard during early outreach, and a benchmarking exercise of existing similar processes. An emerging body of good practices now coalescing in existing global review mechanisms can usefully inform our own work. (For more details, see the draft rules of procedure document and accompanying issues paper "*Building a dispute resolution process for the Canadian international extractive sector: A backgrounder"* both available on the Counsellor's website.)

Expectations:

The consultation began with participants indicating their 'hopes' and 'fears' for the dispute resolution process. A summary of the comments from participants are captured below:

HOPES	FEARS
Hope for a "rapid" and "flexible" process	Fear that the consultation process won't be fast enough
Hope to see the Office of the CSR Counsellor operationalized	Fear that it won't achieve "real" results
Hope that this will encourage the use of performance standards by Canadian companies	Fear that that it won't be flexible enough and at the same efficient

Hope this will also focus on prevention-building community and corporate capacity	Fear that there won't be a budget for costs related to the process
Hope this will help establish more networks	
Hope there is concrete follow up on cases	

Guiding Principles

Principles are important in guiding the work of the Office. Workshop participants were asked to identify and discuss principles the Office should embody. Participants were asked to comment on five key principles that have emerged in the consultation discussions and that are listed in the backgrounder document. Did these resonate? Participants also added a number of different principles: responsiveness, efficacy, and balance.

PRINCIPLE	WHAT DOES THIS MEAN IN PRACTICE?
Accessibility	• Identify the biggest barriers to entry: legal? Cultural? Language? Physical? • Ensure that the rules are not so complex as to require legal support • Accepting information from parties in different formats, etc. to allow flexibility in presentation • Need to agree on which languages would be accepted. Anything beyond English and French? • Taking into consideration the laws and processes of other countries • Ensuring communications about existence of Office • Use of Canadian missions overseas is recommended to receive requests for review.
Transparency	• Need to clarify which information should be kept confidential and which information can be divulged • The process should be transparent but information should not be - it should allow for in camera sessions • It is important to protect individuals from harm that might result from transparency • Since Office of the CSR Counsellor is subject to Access to Information, it will be important to clarify for parties the type of information that would be disclosed

	• "Transparency builds credibility"
Independence	• Ensure an independent budget • Follow the same Code of Ethics as the Government of Canada • "autonomy" is key; "independence" is not • communicate the boundaries for the staff and the Counsellor
Effectiveness	• a new item for discussion that emerged in Montreal was the need to distinguish between "effectiveness" and "efficiency" – the office is small and must be focussed on where it can add value. • "I can kill a fly with a swatter or with a bomb, both achieve the desired outcome, but only one is efficient." • The rules of procedure need to be a framework not a regimented process – to provide parties with predictability but not limit creativity and flexibility.
Responsiveness	• Responsiveness is key to building credibility • Establish service standards for CSR reviews – for instance being clear about amount of time it will take to receive a response

Draft rules of procedure

We proceeded to a discussion of the draft rules of procedure which participants had received in advance of the session. These are found on the Counsellor's website. Although all dispute resolution mechanisms are voluntary, they can have significant reputational impacts, particularly when public reporting is included in the process.

Participants in Montreal offered a number of interesting suggestions and comments on the rules of procedure. They suggested that the real "result" or objective of the office would be the process of conversation and constructive problem-solving and therefore that a good result could be measured, for instance, within a six month time frame as: do the parties agree to enter into a process of mediation or discussion under a framework agreement? This would be the "written consent" required by the Order in Council, but it would not be sought until well into the process. Such a window of time would also help establish a reasonable timeframe for action but not risk dragging the office into endless, unfruitful engagement. It was noted that "the longer each case takes, the fewer cases the Office can take on."

The group was fairly consistent on its view that the Office should stay away from "fact-finding" in any investigative sense. The Counsellor should maintain a neutral stance and not pronounce on or validate "facts." Information could be gathered by a third party if necessary. One participant suggested framing that part of the process as "situational analysis" rather than "fact-finding."

There was unanimous support in the room for including post-agreement monitoring within the mandate, as it was felt that monitoring was a critical incentive to parties to follow through on promises made. Not matter what the outcome, a report from the Office outlining the situation, what was attempted, what happened and what path forward was found (or not found) was deemed vital.

At issue 1: Eligibility screening criteria

The Counsellor's mandate, as articulated in the Order in Council, stipulates a number of screening criteria that the Counsellor "shall consider" when assessing a request for review. These elements were discussed in an effort to understand how workshop participants viewed screening criteria importance and utility. These criteria would apply only to the initial screening period, intended to be completed within approximately 20 days.

Screening criteria prioritization exercise

Each participant received an envelope containing 10 pennies and was asked to distribute the pennies according to relative weighting of screening criteria. The participants provided the following prioritization of concerns:

1) nature and seriousness of the issue (31 pennies)
2) substantiation of the case (31 pennies)
3) whether the issue was made in good faith (14 pennies)
4) Time that has elapsed since the alleged activity occurred or since the requester has become aware of the issue (8 pennies)
5) the extent to which other redress mechanisms have been exhausted (6 pennies).

In Montreal, participants felt that requests for review must be prioritized and should not be handled on a "first come first served" basis. One novel idea that surfaced in this session was to have a quarterly "closing" of requests for review. Once per quarter, all those submitted would be assessed and prioritized. All requests for review should be logged and made transparent but the Office must ensure that reasons for decisions made are clear and transparent and well communicated.

Participants felt much more clarity was needed around "who can bring an issue forward" on both the company and community sides – what, for instance, fits the definition of a Canadian company? Some discussion ensued about companies that are Canadian in administration only. What constitutes "reasonable" beliefs? The group reach a significant degree of consensus on the idea that communities need not know which exact standard is at issue.

At Issue 2: Consent from parties

In reviewing the list of screening criteria, many participants voiced a concern that the list began to read as though the Office was designed to be an "office of last resort," an approach they were not in agreement with. Some reasonable efforts at resolving the dispute should have been undertaken before approaching the Office, however it is unreasonable to ask that all other avenues be "exhausted" before approaching the Office.

In order to address concerns that parties might use the Office or the process for publicity only, participants suggested that the Office ensures parties understand the potential and possible outcomes of this mechanism – both what it can and cannot achieve. Participants also suggested

that parties approaching the Office agree in advance to make good faith efforts to get to the conversation stage. Again, as noted above, a fairly lengthy period of consultation and conversation was seen as acceptable prior to soliciting for written consent.

If you were the CSR Counsellor, what would you do? Case Studies

Two cases studies were discussed by participants, designed to have the participants walk through eligibility screening for a fictional request for review made by a company and by an NGO. The first case study deals with questions of scope, mandate, timing, and contractual relationships. The second case study raised issues related to reviews of "unfounded allegations" and explored incentives for organizations to participate in such a process.

In working through the cases, participants saw value in the Office becoming involved if it would allow for a way forward, even jump starting a tired or moribund dialogue. However, criminal activity should be clearly dealt with elsewhere. And any situation where one party chose not to participate could not continue, so parties must have a desire and interest in problem resolution and dialogue. "The Counsellor has to have parties to bring together…"

At issue 3: Decision making and Governance

How should the Office of the CSR Counsellor make decisions?

The Montreal workshop raised two key themes. First, that the Office must be able to engage outside experts to provide guidance on an ad hoc basis on particular reviews or issues. This would require resources and the Office must set aside such resources. "If you don't understand the case, you can't resolve it."

And second, there was a fair degree of consensus that an advisory board was not necessary or even desirable. But the group did see value in an annual multistakeholder gathering to disseminate learnings, build networks and share information.

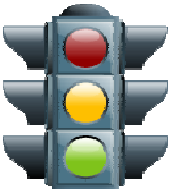
"The buck stops with the CSR Counsellor."

At Issue 4: Defining Success

Workshop participants raised the following points in a discussion about possible success metrics:

- The number of requests for review, the number of requests deemed eligible, the number of requests moving to a dialogue stage
- Contribution to problem solving communicated in a case study way
- Benchmark the success rates of other mechanisms
- Average length of each stage of the process (number of days)

Recommendations



Participants were asked to provide recommendations to the Counsellor. "Red" indicates areas the Office of the CSR Counsellor should avoid; "Yellow" indicates areas where the Office should be cautious; "Green" indicates areas where the Office should proceed.

RED (avoid)	**YELLOW** (exercise caution)	**GREEN** (proceed)
• Do not allow the office to become the Office of "Last Resort" • Don't create an advisory board • Avoid appearance of becoming a judicial process	• Understand the legal implications for the Office – can it be sued? • Need to obtain budgets for costs associated with cases but want to avoid being influenced by funds received from external parties • Be cautious about "proof" – it may not be reliable • Exercise caution with areas of confidentiality • Build in cultural sensitivity	• After two years, develop a specific set of guidance tools for Canadian companies • Create a guidance document including sample case studies for each stage of the process to help guide organizations through it • Create a "code of conduct" for participants in the review process • Educate companies; make sure the information is pushed out • Develop performance indicators to identify hot spots and track changes and see if things are getting better or worse • Use a "call for tenders" approach to organize the cases • Depending upon the complexity of the case, create a separate fund to pay for expertise • Call upon missions abroad to help with on-the-ground assessments • At end of three-year period have a concrete set of standards and lessons learned from different cases • Create an annual learning "forum"

The meeting adjourned with an understanding that a summary report would be produced. Participants were invited to provide further feedback if desired by submitting written comments to:

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