
BILL C-300: SOUND AND MEASURED REINFORCEMENT FOR CSR

A REPORT ON THE LEGAL AND POLICY DIMENSIONS OF BILL C-300 PREPARED FOR THE
CANADIAN NETWORK ON CORPORATE ACCOUNTABILITY

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This Report was originally to be co-authored by the **Hon. Charles Doherty Gonthier**, retired Justice of the Supreme Court of Canada. Sadly, Charles passed away prior to its completion. I would like to acknowledge his contribution and dedicate this Report to his memory.

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EXECUTIVE SUMMARY

This Report produced for the Canadian Network on Corporate Accountability addresses a series of questions concerning the legal and policy foundations of Bill C-300. It was prepared with the assistance of members of the Centre for International Sustainable Development Law.

The Report begins with some general background on the origins and purpose of Bill C-300 and then addresses each of the questions separately, looking first at two broad policy questions and then turning to a series of ten legal questions. Its main findings can be summarized as follows:

- Bill C-300 directly emerges from wide stakeholder consultation that took place through the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries. It is consistent with the recommendations of National Roundtables Advisory Group, if anything proposing a somewhat more modest set of government interventions.
- There is no evidence that Bill C-300 will unfairly disadvantage Canadian extractive companies and in fact, there is strong reason to believe that the opposite is true. It is more likely to create a regulatory environment that would make Canada and Canadian extractive sector companies world leaders in the area of CSR, resulting in a competitive advantage for those Canadian companies when operating internationally.
- Whereas it is true that there are constraints upon the exercise of the federal trade and commerce power in regard to the regulation of a single industry, such constraints are inapplicable to Bill C-300. Rather, Bill C-300 would simply place a valid set of conditions upon existing government support to the extractive sector.
- The general requirement that a complaint appear to be reasonable on its face is sufficiently stringent to allow the Minister in question efficiently to screen out complaints that are frivolous and vexatious.
- While one of its underlying purposes is to promote the responsible conduct of Canadian mining, oil, and gas companies operating in developing countries, Bill C-300 does not apply extraterritorially. The direct effects of Bill C-300 are domestic and within federal jurisdiction.
- There are good precedents internationally and within existing Canadian practice for the kinds of measures Bill C-300 envisages.
- The Bill C-300 complaints mechanism is consistent with the administrative law standards of procedural fairness and natural justice.
- The international standards referred to in s. 5(2) of Bill C-300 are fully transparent and provide a strong basis for a regulatory framework that establishes a level

playing field at the global level. There are no adverse legal implications arising from the fact that the Ministers have up to twelve months to issue the guidelines.

- There is a clear legal basis for the provisions designed to ensure that Canadian corporations act in a manner consistent with international human rights standards.
- There are two CSR-related dispute mechanisms that are applicable to the conduct of Canadian extractive companies operating abroad: the OECD Guidelines for Multinational Enterprises and the GOC's CSR Strategy. Bill C-300 does not establish a complaints process that is duplicative of either of them.
- There is no conflict between government representatives receiving evidence from witnesses abroad and the courts' exclusive adjudicative role. Indeed, there is ample precedent for such foreign fact-finding.
- All of the material terms contained in Bill C-300 have been given adequate definition directly in its provisions, through incorporation by reference, or in light of a construction of the bill's purpose and meaning as a whole. Thus the bill, should it be enacted, is sufficiently clear and precise to be enforceable.

BACKGROUND ON BILL C-300

Bill C-300 is a private Member's bill tabled in Parliament on February 9, 2009 by Liberal MP John McKay. If the bill is enacted it will be cited as the *Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act*. Its purpose is set out in section 3, which states:

The purpose of this Act is to ensure that corporations engaged in mining, oil or gas activities and receiving support from the Government of Canada act in a manner consistent with international environmental best practices and with Canada's commitments to international human rights standards.

As is evident from the title, the focus of Bill C-300 is on the mining, oil and gas activities of Canadian corporations in *developing countries*. This is achieved through the definition of "mining, oil or gas activities" under the bill, which is limited to:

[T]he exploration and drilling for, and the production, conservation, processing or transportation of, mineral resources, oil or gas in the territory of a developing country or on the high seas where such activities are controlled directly or indirectly by a Canadian corporation.

At the time of this writing, Bill C-300 has passed its second reading in the House of Commons. The bill has been sent on to the Standing Committee on International Affairs and Foreign Development for study.

Bill C-300 was introduced following a period in which the Canadian extractive sector had been under considerable scrutiny with regard to how it had been addressing the environmental and social impacts of its activities in developing countries. In June 2005 the Standing Committee on Foreign Affairs and International Trade (SCFAIT) issued a report entitled *Mining in Developing Countries and Corporate Social Responsibility*, calling on the federal government to institute measures to ensure that Canadian mining companies conduct their operations abroad in a socially and environmentally responsible manner.¹ The Government of Canada responded the following year by organizing a series of "National Roundtables on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries" (the "National Roundtables") in order "to examine measures that could be taken to

¹Canada, House of Commons, Standing Committee on Foreign Affairs and International Trade, "Fourteenth Report: Mining in Developing Countries – Corporate Social Responsibility" by B. Patry, in *Sessional Papers*, No. 8510-381-179 (2005).

position Canadian extractive sector companies operating in developing countries to meet or exceed leading international Corporate Social Responsibility (CSR) standards and best practices.”²

Roundtables were held in Vancouver, Toronto, Calgary, and Montreal in the summer and fall of 2006. An Advisory Group, consisting of representatives from the extractive industry, civil society, academics, and labour groups, was established to report on the Roundtables and draft recommendations for adoption by the Government of Canada. The Advisory Group submitted its final report to the Canadian Government in March 2007.³ The central recommendation in the Advisory Group’s report concerned the development of a “Canadian CSR Framework” consisting of six major components. This recommendation is examined in greater depth in the response to question 1 below. Bill C-300 is drafted in a manner consistent with the Canadian CSR Framework recommended by the National Roundtable’s Advisory Group.

The federal government, in March 2009, released its own CSR strategy for the international extractive sector titled “Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for Canadian International Extractive Sector” (“the GOC CSR Strategy”). This strategy was informed in part by consultations undertaken during the National Roundtables.⁴ Further details on the GOC CSR Strategy are also provided in the response to questions 1 and 10 below.

²DFAIT, “The National Roundtables on Corporate Social Responsibility”, online: DFAIT http://geo.international.gc.ca/cip-pic/current_discussions/csr-roundtables-en.aspx.

³“Advisory Group Report – National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Sector in Developing Countries”, (March 2007), online: http://www.mining.ca/www/media_lib/MAC_Documents/Publications/CSRENG.pdf.

⁴See DFAIT, Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector (March 2009), online: DFAIT <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse-strategie.aspx>.

CSR POLICY QUESTIONS

1. Stakeholder consultation: *Does Bill C-300 represent a marked and unwarranted departure from the recommendations of the Advisory Group arising from the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries? Similarly, does Bill C-300 suffer from a lack of input from those extractive companies that would be affected by the new law?*

The National Roundtables Advisory Group central recommendation in its 2007 report concerns the development of a Canadian “CSR Framework” consisting of six major components:

- Canadian CSR Standards, for initial application, based on existing international standards that are supported by ongoing multi-stakeholder and multilateral dialogue.
- CSR reporting obligations based on the Global Reporting Initiative, or its equivalent during an initial phase-in period, at a level that reflects the size of the operation. The Global Reporting Initiative relies on an international multi-stakeholder process for its development and continued improvement and applies universally-applicable reporting principles, guidance and indicators for organizations of all sizes and sectors.
- An independent ombudsman office to provide advisory services, fact finding and reporting regarding complaints with respect to the operations in developing countries of Canadian extractive companies.
- A tripartite Compliance Review Committee to determine the nature and degree of company non-compliance with the Canadian CSR Standards, based upon findings of the ombudsman with respect to complaints, and to make recommendations regarding appropriate responses in such cases.
- The development of policies and guidelines for measuring serious failure by a company to meet the Canadian CSR Standards, including findings by the Compliance Review Committee. In the event of a serious failure and when steps to bring the company into compliance have also failed, government support for the company should be withdrawn.
- A multi-stakeholder Canadian Extractive Sector Advisory Group to advise government on the implementation and further development of the Canadian CSR Framework.

It should be noted that the Advisory Group’s report also had other subsidiary recommendations, but this Report for the Coalition has been restricted to an analysis of the “central” recommendation that relates to the CSR Framework.

Bill C-300 does not represent a marked and unwarranted departure from the recommendations of the Advisory Group. In fact, it is clear that the drafters have referred to the Canadian CSR Framework recommended by the Advisory Group in

the formulation of Bill C-300 and that the bill better captures the main components of the Advisory Group's recommendations than does the GOC CSR Strategy.

To support this assertion, appendix 2 to this Report sets out an analysis comparing both Bill C-300 and the GOC's CSR Strategy (which was also informed by the National Roundtables consultations) with the six components of the Canadian CSR Framework recommended by the Advisory Group. The analysis shows that Bill C-300 is "consistent" or "partially consistent" with four of the six framework components, while the GOC CSR Strategy is "partially consistent" with only three of the six framework components. To summarize, Bill C-300 does not seek to create the office of an independent ombudsman, although it does envisage a complaints mechanism. It does not require CSR reporting or the establishment of a Canadian Extractive Sector Advisory Group. In essence, it is similar in principle to the Advisory Group's recommendations but envisages somewhat less formal oversight.

This Report was not written with access to any detail about the degree of consultation undertaken by MP John McKay in the process of drafting the bill. However, it cannot be said that Bill C-300 just appeared "out of thin air." Since Bill C-300 emerged from the recommendations flowing from the National Roundtables process, which itself, had very extensive consultations with representatives from industry, labour, the socially responsible investment community, civil society, and academia, it is difficult to assert that it has a tarnished pedigree. According to the Advisory Group Report, over the course of the National Roundtables, 156 oral presentations were heard and 104 written submissions were received. Of these oral presentations, 33 were from industry representatives, 61 from civil society, 15 from labour organizations, 31 from academics and research institutes, and 16 from members of the public without a stated affiliation.⁵ Companies and industry associations that made written submissions included, among others, Barrick Gold Corporation, Cameco Corporation, TVI Pacific Inc, Orezone Resources Inc, Pacific Rim Mining Corporation, and the International Council on Mining and Metals. What's more, the Advisory Group itself had significant industry representation including, among others, the CEO of the Mining Association of Canada, the Executive Director of the Prospectors and Developers Association of Canada, and the Senior Manager, Corporate Responsibility and Government Affairs at Talisman Energy Inc.

Were it the case that Bill C-300 overshot the Advisory Group's recommendations in scope and degree of intervention, perhaps one could still claim that its grounding in public process was questionable. But the opposite is true. Bill C-300, if anything, takes a somewhat more cautious approach than that recommended by the Advisory

⁵"Advisory Group Report – National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Sector in Developing Countries", (March 2007) at i.

Group and thus remains clearly within the bounds of what had emerged from the public process.

2. Unfair disadvantage: *Will Bill C-300 unfairly disadvantage Canadian extractive companies working abroad as compared to their foreign competitors not subject to the provisions of the Bill or similar legal constraints and obligations?*

There is no evidence that Bill C-300 will unfairly disadvantage Canadian extractive companies and in fact, there is strong reason to believe that the opposite is true. It is more likely to create a regulatory environment that would make Canada and Canadian extractive sector companies world leaders in the area of CSR, resulting in a competitive advantage for those Canadian companies when operating internationally. Research has shown that companies that are socially responsible—both due to mandatory measures and through complementary voluntary action—gain certain advantages over competitors that do not have in place CSR policies and programs.⁶ Some of the areas of competitive advantage arising from CSR include:

- Cost savings, improved productivity and operational efficiencies;
- Improved risk management;
- Positive effects on employee recruitment, retention, and motivation;
- Attracting customers and investors;
- Improved relations with the local community; and
- Better access to lenders and insurers.

It is also worth recalling that the Mining Association of Canada publicly voiced its support for the CSR Framework recommended by the National Roundtables Advisory Group. In a joint press release, dated 29 March 2007, the Mining Association asserted:⁷

Canada could become a world leader on Corporate Social Responsibility (CSR) if the federal government and other stakeholders accept and act on the recommendations...

In the same press release the Executive Director of the Prospectors and Developers Association of Canada was equally supportive:

Canadian mining companies listed on Canadian stock exchanges are the largest outward investors, with interests in more than 8,000 properties in over 100

⁶See M. Kerr, R. Janda and C. Pitts (Co-author & Ed.) *Corporate Social Responsibility: A Legal Analysis* (Markham: LexisNexis, 2009), Chapter 2.

⁷“Groundbreaking Report on Mining, Oil and Gas Companies Released: Civil Society and Industry Representatives Agree on Good Overseas Practices”, online: Mining Association of Canada http://www.mining.ca/www/media_lib/Press_Release/2007/CSREng.pdf.

countries around the world,” adds Tony Andrews, Executive Director of the Prospectors and Developers Association of Canada. “Their activities can help to create new economic opportunities in the developing world. However, it is equally important that they continually improve their performance in line with corporate social responsibility expectations. The Advisory Group’s report will contribute to the development of necessary guidance and tools.

Given that Bill C-300 draws on, and is in keeping with, the recommendations arising from the National Roundtables, it is difficult to conceive how the bill could have an effect on the extractive sector opposite to that of the CSR Framework proposed by the National Roundtables Advisory Group.

Indeed, in its March 2009 document outlining the GOC CSR Strategy, the Ministry of Foreign Affairs and International Trade also emphasizes that addressing CSR “will improve the competitive advantage of Canadian international extractive sector companies by enhancing their ability to manage social and environmental risks.”⁸ As compared with the GOC CSR Strategy, Bill C-300 will even more clearly do so by signalling as well to investors and foreign governments that these risks are being addressed through a binding industry-wide framework. It makes sense to provide such a framework for the extractive sector in distinction to others not only because this is a sector facing a significant set of such risks abroad, but also because Canada is a global leader in the sector. To quote again from the GOC’s CSR Strategy:

Canada is a particularly strong player in the global mining sector. Canadian financial markets in Toronto and Vancouver are the world’s largest source of equity capital for mining companies undertaking exploration and development. Mining and exploration companies based in Canada account for 43 percent of global exploration expenditures. In 2008, over 75 percent of the world’s exploration and mining companies were headquartered in Canada. These 1293 companies had an interest in some 7809 properties in Canada and in over 100 countries around the world.

Canada can thus bring a critical mass of extractive sector companies within the ambit of its CSR regime, which could serve as a global gold standard. If the positive reputational effect for Canadian extractive sector companies of coming under such a gold standard is to have its maximal impact, it is critical that all of them come under it. Bill C-300 could achieve that outcome.

⁸See *supra* note 3.

LEGAL QUESTIONS

3. Constitutional validity: *Are there constitutional impediments against federal legislation addressing a particular sector? Are the eligibility requirements for financial support proposed by Bill C-300 consistent with the constitutional principles underlying the provision of financial support by the federal government?*

Whereas it is true that there are constraints upon the exercise of the federal trade and commerce power in regard to the regulation of a single industry, such constraints are inapplicable to Bill C-300.⁹ Those constraints apply only to the second branch of the trade and commerce power, its so-called “national dimension,” which need not really come into play to ground Bill C-300.¹⁰ The essence of the proposed legislation—its “pith and substance”—is to place conditions upon support extended by the Government of Canada under the *Export Development Act*, *Department of Foreign Affairs and International Trade Act*, and *Canada Pension Plan Investment Board Act*. The constitutional validity of those pieces of legislation is unquestioned. Parliament clearly has authority to legislate to promote international trade and to exercise its spending power to provide financial support for Canadian businesses operating abroad. There is no constitutional obstacle preventing Parliament from placing a condition, applicable to a single industry, upon the access that industry has to such financial support. Indeed, federal tax law is rife with such sector-specific arrangements and the extractive sector continues to lobby for them.¹¹

Implicit in the question that has been posed is the applicability to Bill C-300 of constitutional constraints upon financial appropriations. At the outset, a clear distinction must be drawn between legislation that would appropriate public funds—which Bill C-300 does not purport to do—and legislation that places conditions upon the use of public funds that have otherwise been appropriated, which Bill C-300 would do. In brief compass, ss. 53-57 of the *Constitution Act, 1867* provide a specific constitutional foundation and process for public appropriations and taxes. Such legislation must be initiated in the House of Commons (not the Senate) and according to s. 54 must first be “recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is

⁹*Labatt Brewing Co. v. Canada*, [1980] 1 S.C.R. 914 at 935.

¹⁰*General Motors of Canada v. City National Leasing Ltd.*, [1989] 1 S.C.R. 641.

¹¹Note, for example, the 15% Mineral Exploration Tax Credit. See Marilyn Scales, “Canada’s Mining Ministers Urged to Support Mineral Industry Growth”, online: Republic of Mining <http://www.republicofmining.com/2009/09/10/canadas-mining-ministers-urged-to-support-mineral-industry-growth-by-marilyn-scales/>.

proposed.¹² This gives rise to the restrictions in parliamentary practice upon the scope of a private Member's bill, well summarized as follows:

There is a constitutional requirement that bills proposing the expenditure of public funds must be accompanied by a royal recommendation, which can be obtained only by the government and introduced by a Minister. Since a Minister cannot propose items of Private Members' Business, a private Members' bill should therefore not contain provisions for the spending of funds. However, since 1994, a private Member may introduce a public bill containing provisions requiring the expenditure of public funds provided that a royal recommendation is obtained by a Minister before the bill is read a third time and passed. Before 1994, the royal recommendation had to accompany the bill at the time of its introduction. The Speaker is responsible for determining whether any bill requires a royal recommendation and the Speaker is empowered to decline to put the necessary questions on bills which require, but have not received, a royal recommendation.¹³

For example, had Bill C-300 proposed the creation of an ombudsman office, it would have entailed the expenditure of fresh public funds. In contrast, Bill C-300 seeks to set conditions upon the existing appropriation of funds and thus will give rise to no new expenditures or taxes. In brief, its constitutional validity is to be assessed solely from the standpoint of whether it falls within a head of federal jurisdiction, which it undoubtedly does.

4. Vexatious claims: *Are the measures included in Bill C-300 for dealing with frivolous and vexatious claims adequate?*

The inherent power of the Ministers under Bill C-300 to refuse to hear complaints that are clearly attempts to abuse the authority of their public office is analogous to Canadian courts' inherent jurisdiction to protect themselves from abuse of their procedures. In the case of *Metropolitan Bank, Ltd. v. Pooley*,¹⁴ the House of Lords explained that even before adoption of the *Supreme Court of Judicature Act, 1873*, courts were prepared to refuse to hear any "manifestly vexatious suit which was plainly an abuse of the authority of the court." The House of Lords noted further that "[t]he power seemed to be inherent in the jurisdiction of every court of justice to protect itself from the abuse of its procedure." That is, it was open to courts to

¹²See *Reference re Agricultural Products Marketing Act, 1970* [1978] 2 S.C.R. 1198.

¹³Robert Marleau and Camille Montpetit, *House of Commons Practice and Procedure* (2000) online: <http://www2.parl.gc.ca/MarleauMontpetit/DocumentViewer.aspx?DocId=1001&Sec=Ch21&Seq=3&Lang=E#fnB40>.

¹⁴*Metropolitan Bank, Ltd. v. Pooley*, [1881-85] All E.R. 949 (H.L.), at p. 951. See also the Supreme Court of Canada's ruling in the case of *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959.

ensure that their processes and resources—which are of course the public’s processes and resources—were not used simply to harass parties through the initiation of actions that were obviously without merit.

Under section 4(3) of the bill dealing with the powers and functions of the relevant Ministers, the Minister who receives a complaint may determine whether the complaint is *prima facie* frivolous or vexatious or is made in bad faith. Only if the Minister is of the view that the complaint discloses reasonable grounds by a complainant will he or she examine the matter described in the complaint and assess the level of compliance with the guidelines set out in section 5 of the bill. A preliminary investigation into the merits of a complaint upon its receipt by the relevant Minister is neither contemplated by nor practically required. The bill thus allows the Ministers to develop a simple and streamlined process for the exclusion of non-meritorious complaints, such as complaints that are unsupported by sufficient facts or brought by individuals simply to pursue an ulterior motive or agenda (*e.g.* to disrupt the business of a competitor).

The general requirement that a complaint appear to be reasonable on its face is nevertheless sufficiently stringent to allow the Minister in question efficiently to screen out complaints that are frivolous and vexatious. It is thus reasonable that the complaints screening mechanism envisaged by Bill C-300 places the burden of demonstrating reasonable grounds for a complaint squarely on the prospective complainant. This can ensure that the authority of the Ministers’ public offices will not be abused through the initiation of complaints that are obviously without merit.

5. Extraterritorial application: *To what extent does Bill C-300 apply extraterritorially? Does the Canadian government have the constitutional authority to introduce legislation with extraterritorial application? Does this form of legislation breach either the Constitution or international law or otherwise improperly interfere with the domestic rules and regulations of other countries?*

While one of the bill’s underlying purposes is to promote the responsible conduct of Canadian mining, oil, and gas companies operating in developing countries, Bill C-300 does not apply extraterritorially. Rather, it applies domestically at the federal level. It establishes eligibility criteria for access to financial support, administered by enumerated federal departments and agencies, for Canadian extractive companies that operate in developing countries. Simply put, the direct effects of Bill C-300 are domestic and within federal jurisdiction.

That said, Bill C-300 may be perceived to have extraterritorial effects and to address extraterritorial effects of activities by Canadians. However, Parliament can and does validly legislate with respect to extraterritorial effects and can even enact legislation

with extraterritorial application. It was the *Statute of Westminster, 1931*¹⁵ that conferred on Canadian Parliament the authority to make laws having extraterritorial application, and Canada has since enacted such legislation on many occasions. The *Competition Act* is a prominent example touching upon the behaviour of companies.¹⁶ Indeed, that legislation explicitly contemplates the interaction of the legislation with foreign statutes and rulings and instructs the Competition Tribunal to take account of foreign competition.¹⁷ The *Crimes Against Humanity and War Crimes Act*,¹⁸ for instance, addresses crimes of universal jurisdiction. Section 6(1) of that statute provides that every person who commits genocide, a crime against humanity, or a war crime outside of Canada is guilty of an indictable offence. Pursuant to s. 8 of the Act, such a person may be prosecuted in Canada if (a) at the time of the offence the person was a Canadian citizen or a citizen of a state engaged in armed conflict against Canada, or the victim was a Canadian citizen or a citizen of a state allied with Canada in an armed conflict, or (b) after the offence was committed, the person is present in Canada. These provisions exemplify valid extraterritorial prescriptive jurisdiction, and any trial for such offences would constitute a legitimate exercise of extraterritorial adjudicative jurisdiction.

Moreover, as the Supreme Court of Canada held in *R. v. Hape*,¹⁹ Parliament even has clear constitutional authority to adopt legislation governing conduct by *non-Canadians outside of Canada*. Its ability to adopt such legislation is informed by the binding international law principles of equal territorial sovereignty and non-intervention, by the comity of nations, and by the limits of international law to the extent that they are not incompatible with domestic law. By virtue of parliamentary sovereignty, it is nevertheless open to Parliament to enact legislation that is inconsistent with those principles, but in so doing it would violate international law and offend the comity of nations. Thus, in light of the jurisdictional principles of customary international law and the prohibition on interference with the sovereignty and domestic affairs of other states, Canadian law can be *enforced* in another country only with the consent of the host state. However, Bill C-300 in no way purports to establish a foreign enforcement mechanism. The Supreme Court of Canada neatly summed up these principles in its decision in *R. v. Terry* as follows:

The principle that a state's law applies only within its boundaries is not absolute: *The Case of the S.S. "Lotus"* (1927), P.C.I.J. Ser. A, No. 10, at p. 20. States may invoke a

¹⁵*Statute of Westminster, 1931* (U.K.), 22 Geo. 5, c. 4, s. 3.

¹⁶*Competition Act*, R.S. 1985, c. C-34.

¹⁷*Ibid.* ss. 83, 84 and 93.

¹⁸*Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24.

¹⁹*R. v. Hape*, [2007] 2 S.C.R. 292.

jurisdiction to prescribe offences committed elsewhere to deal with special problems, such as those provisions of the *Criminal Code*, R.S.C. 1985, c. C-46, pertaining to offences on aircraft (s. 7(1), (2)) and war crimes and other crimes against humanity (s. 7(3.71)). A state may likewise formally consent to permit Canada and other states to enforce their laws within its territory for limited purposes.²⁰

Accordingly, even if Bill C-300 were understood to have extraterritorial application, which is not the case according to the better reading, such application would clearly be within the legislative authority and competence of Parliament. Bill C-300 also respects the sovereignty and comity of nations principles of international law, as no mention is made in it of any intention to override the equality and sovereignty of nations by seeking unilaterally to enforce Canadian law abroad.

6. *International precedents:* *Are there international precedents of legislation or other government measures similar to those outlined in Bill C-300?*

Precedent: extraterritorial purposes

The response to question 5 describes how one of the underlying purposes of Bill C-300 is to promote the responsible conduct of Canadian corporations operating abroad. There are numerous international precedents for such action, with many governments from around the globe having elected to introduce measures designed to promote responsible behaviour in the foreign activities of corporations registered in their jurisdictions.

Perhaps the most common example is legislation which makes it a criminal offence for any person, including corporations, to bribe a foreign public official in the course of international business. At the present time, all 30 OECD nations (including Canada), have implemented legislative measures to introduce this extraterritorial offence.²¹ A further relevant example is the U.S *Alien Tort Claims Act* (ATCA) which allows foreign citizens to bring civil actions in U.S courts for certain violations of international law.²² Recent ATCA decisions have confirmed that the statute provides

²⁰*R. v. Terry*, [1996] 2 S.C.R. 207, at para. 15.

²¹See *Corruption of Foreign Public Officials Act* S.C. 1998 c. 34. This legislation is consistent with the commitment made by OECD nations which ratified the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* 1997.

²²*Alien Tort Claims Act* 28 U.S.C. § 1350.

for a right of action against non-state actors (*e.g.* corporations) for violations of international law—including egregious human rights violations.²³

Precedent: government support

Bill C-300 also includes provisions that would deny or require the withdrawal of government support for Canadian corporations that have acted inconsistently with the bill's corporate accountability guidelines. Such support includes: financing and insurance through the Export Development Corporation, support from the Department of Foreign Affairs and International Trade (with the exception of ordinary consular services) and investments by the Canada Pension Plan.

There is international precedent for legislation of this kind. For example, in 2004 the Government of Norway issued a new regulation establishing ethical guidelines that would apply to investment decisions for its Government Pension Fund—one of the world's largest managed investment funds. The guidelines, amongst other things, are aimed at avoiding investments that entail “an unacceptable risk that the Fund contributes to certain specified gross or serious ethical violations, including serious or systematic human rights violations, severe environmental damage or gross corruption.” The ethical guidelines provide for the exclusion of companies from the portfolio to achieve this objective.²⁴

A further example concerns the Export-Import Bank of the United States. The bank's legislative Charter requires the bank to take into account the potential beneficial and adverse environmental effects of goods and services for which support is requested under its direct lending and guarantee programs. The Charter also grants the Board of Directors the authority “to withhold financing from a project for environmental reasons.”²⁵

It should also be noted that legislative precedents for the denial of government financial support, consistent with those outlined in Bill C-300, also exist within Canada. For instance, Canada's *Export Development Act* already requires the Export Development Corporation (prior to entering into a transaction) to determine whether the project is likely to have adverse environmental effects despite the

²³See for example, the United States Supreme Court's decision *Sosa v. Alvarez-Machain* 124 S. Ct. 2739 (2004).

²⁴Issued pursuant to *Regulation on the Management of the Government Pension Fund* (22 December 2005) formerly the *Regulation on the Management of the Government Petroleum Fund* (19 November 2004). For background on the Ethical Guidelines, see the Department of Finance, Consultation Paper—Evaluation of the Ethical Guidelines for the Government Pension Fund—Global (2008), online: http://www.regjeringen.no/upload/FIN/Vedlegg/aff/evaluation_ethical_Guidelines.pdf.

²⁵See 12 U.S.C § 635i-5(a)(2).

implementation of mitigation measures and, if such is the case, whether it is justified in entering into the transaction.²⁶

7. Procedural fairness: *Does the complaints mechanism under the bill meet the administrative law standards of procedural fairness and natural justice?*

Procedural fairness is a cornerstone of modern Canadian administrative law. Public decision makers are required to act fairly in arriving at decisions that affect the rights, privileges, or interests of an individual, including corporations as legal persons. As has been noted many times, the concept of procedural fairness is eminently variable, and its content is to be decided in the specific context of each case.

The duty to comply with the rules of natural justice and to follow rules of procedural fairness extends to all administrative bodies acting under statutory authority.²⁷ Within these rules exists the duty to act fairly, which includes providing the parties to an administrative dispute a right to be heard, otherwise known as the *audi alteram partem* rule.

The complaints mechanism envisaged in Bill C-300 is consistent with the administrative law standards of procedural fairness and natural justice. In the first instance, when the Ministers are in receipt of a complaint, section 4(4) of the bill provides that the Ministers “may” consider information from both the corporation and the public, including evidence from witnesses outside of Canada. This aspect of the complaints mechanism ensures that each side of a complaint may in the first instance be heard.

It is worth noting at this juncture, that both in whole and in part and even when not explicit, legislation is presumed to be consistent both with the Constitution and the principles of the rule of law and natural justice. As such, the best reading of the provisions in C-300 regarding the complaints mechanism as it presently stands is that, because it does not explicitly contradict the principles of procedural fairness, it is presumed consistent with those principles. That said, section 4(4) could benefit from some strengthening to ensure that the Ministers “shall” consider any information provided by a corporation that is the subject of a complaint, thereby granting the corporation a right to be heard.

²⁶See section 10.1 of the *Export Development Act* R.S.C. 1985, c. E-20.

²⁷See *e.g. Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*, [1979] 1 S.C.R. 311; *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643, at p. 653.

Furthermore, additional detail on the process for receiving and determining complaints could easily be incorporated into the bill, if that were thought to be desirable. Several international precedents exist that could inform such a process, including, among others, the mechanism presently administered by the Office of the Compliance Advisor/Ombudsman (CAO), the independent recourse mechanism for projects supported by the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA).²⁸ Nevertheless, such detail can also be worked out by the Ministers in administering the legislation.

8. Guidelines: *Do the international standards referred to in section 5(2) provide an appropriate basis for the establishment of the required guidelines? What are the implications arising from the fact that the Ministers have up to twelve months to issue the guidelines?*

Two international standards are specifically referred to in section 5(2): the IFC Policy and Performance Standards on Social and Environmental Sustainability and the Voluntary Principles on Security and Human Rights (VPSHR). These two standards are widely recognized internationally. They were also given specific support in the GOC's CSR Strategy and the recommendations flowing from the National Roundtables. These international standards are fully transparent and provide a strong basis for a regulatory framework that establishes a level playing field at the global level.

That said, as drafted, the standards do not lend themselves easily to direct and literal incorporation by reference within the guidelines under Bill C-300. Practically, however, this technical drafting inconvenience could easily be addressed by only a slight change in the opening words of s. 5(2). The present text stating that "The guidelines shall incorporate: ..." could be replaced with "The guidelines shall be prepared with reference to, and be substantially consistent with: ..." In this way, the language employed in s. 5(2) of Bill C-300 would better reflect the process through which the Ministers "shall issue guidelines that articulate corporate accountability standards for mining, oil or gas activities." Matters of technical drafting and incorporation by reference aside, the practical consequences are the same: the international standards that form the basis of the bill's guidelines under s. 5(2) establish a fair, transparent, and workable framework for assessing Canadian extractive companies' compliance with widely recognized international environmental and human rights principles. Indeed, Canadian extractive companies are undoubtedly already very familiar with the standards referred to in s. 5(2) of the bill.

²⁸Recall that the IFC and the MIGA are the private sector lending arms of the World Bank Group; CAO was established in 1999 and reports directly to the President of the World Bank Group.

Because the guidelines shall be prepared with reference to and be consistent with existing and widely recognized international environmental protection and human rights standards, those companies potentially affected by the guidelines are already fully aware of the performance and funding eligibility criteria they will be required to meet under the new legislation. There are thus no adverse legal implications arising from the fact that the Ministers have up to twelve months to issue the guidelines.

9. Human rights: *Is there a legal basis for the bill to include provisions designed to ensure that “corporations” operate in a manner that is consistent with “international human rights standards”?*

There is a clear legal basis for the provisions designed to ensure that Canadian corporations act in a manner consistent with international human rights standards. Canada has signed and ratified numerous international human rights treaties—most notably the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social and Cultural Rights*—which establish “international human rights standards.” Parliament has the constitutional authority to introduce legislation, such as through Bill C-300, that would implement these customary international law and treaty-based international human rights standards within areas of federal jurisdiction.²⁹ Bill C-300 does not seek to implement human rights standards within areas of provincial jurisdiction.

The fact that Bill C-300 is focused specifically on the activities of “corporations” as opposed to “natural persons” does not diminish its legal legitimacy. In the same way that Canada’s *Crimes Against Humanity and War Crimes Act* has general application to any “person” (which includes by definition “corporations”)³⁰ or Canada’s *Criminal Code* has specific provisions targeting “organizations” (which includes by definition

²⁹See the *Geneva Conventions Act*, R.S.C. 1985, c. G-3, s. 2, and *Anti-Personnel Mines Convention Implementation Act*, S.C. 1997, c. 33 for examples of Parliament’s authority to implement treaty-based human rights standards as part of Canadian domestic law. Note, however, that this authority is constrained by provincial jurisdiction. See for example Standing Senate Committee on Human Rights, “Children: The Silenced Citizens”, April 2007, pp. 9–15. Canada was unable to ratify International Labour Organization Convention No. 138 Concerning Minimum Age for Admission to Employment, since the Constitution grants each province jurisdiction over labour issues, and some provinces were unwilling to raise the minimum age in accordance with that specified in the Convention.

³⁰See *Crimes Against Humanity and War Crimes Act*, 2000, c. 24. The term “person”, for the purposes of this Act, includes a “corporation” when read in conjunction with the definition of “person” set out in section 35(1) of the *Interpretation Act*, R.S., 1985, c. I-21.

a “company”),³¹ it is also legitimate for Bill C-300 to establish standards of behaviour applicable to corporations. Corporations are not excused from respecting human rights on account of the status of their personhood. As the preamble to the Universal Declaration of Human Rights asserts, “every individual and every organ of society” shall recognize and observe human rights.

10. Duplicative process: *Does Bill C-300 create unnecessary and wasteful duplication of pre-existing CSR-related dispute resolution mechanisms applicable to the conduct of Canadian extractive companies operating abroad?*

There are two CSR-related dispute mechanisms that are applicable to the conduct of Canadian extractive companies operating abroad: the OECD Guidelines for Multinational Enterprises and the GOC’s CSR Strategy. Bill C-300 does not establish a complaints process that is duplicative of either of them.

The OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises (“OECD Guidelines”) provide recommendations addressed by governments to multinational enterprises operating in or from adhering countries. The guidelines include voluntary standards for responsible business conduct in various areas, including: disclosure, employment, human rights, environment, combating bribery, consumer interests, science and technology, competition; and taxation.³² Adhering countries consist of all 30 OECD member countries (including Canada) and ten non-member countries.

The OECD Guidelines include a complaints mechanism, known as a “specific instances” procedure. Through this procedure private individuals or organizations (*e.g.* NGOs) can raise with National Contact Points (NCP) established by adhering countries, alleged violations of the guidelines committed by multinational enterprises (*e.g.* corporations) headquartered in their jurisdictions. In Canada, the NCP is an interdepartmental committee chaired by the Department of Foreign Affairs and International Trade.

An NCP cannot issue sanctions arising from a breach of the guidelines and typically its primary focus is on attempting to facilitate a resolution of the issues at hand. However, if a resolution cannot be reached the NCP does have the power to issue a public statement that the guidelines have been contravened—unless the offending

³¹*Criminal Code*, R.S.C. 1985, c. C-34, s. 22.1.

³²*OECD Guidelines for Multinational Enterprises*, Revision 2000.

company has sufficient grounds to argue that the findings should be kept confidential.³³

There are several areas where the complaints mechanism established by the OECD Guidelines differs from that set out in Bill C-300, thereby reducing the potential for duplication:

- Bill C-300 if enacted will have the status of an Act of Parliament. The OECD Guidelines, on the other hand, have the status of a voluntary instrument.
- The NCP cannot impose sanctions on a corporation if it establishes that the OECD Guidelines have been breached. In contrast, Bill C-300 includes the provision of a form of sanction (the withdrawal of financial support) that adds to its deterrence value.
- Unlike the OECD Guidelines, Bill C-300 does not grant the decision-maker discretion to withhold the publication of findings on the grounds of preserving confidentiality.
- Bill C-300 does not provide for a process of mediation, unlike the OECD Guidelines with their inherent focus on issue resolution.

These differences (particularly the first three) also underscore weaknesses in the NCP procedures that were raised in submissions to the National Roundtables. In response, the final report of the Advisory Group to the National Roundtables acknowledged the need for an “enhanced” NCP and identified how the NCP might also be able to play a complementary role within the complaints procedure recommended as part of the wider Canadian CSR Framework. For example, the report points out that the NCP could provide a forum for mediation before a complaint is referred to the proposed ombudsman office.³⁴

In much the same way, the NCP could also play a complementary role to the complaints procedure set out in Bill C-300. This could be implemented through a simple amendment to the bill. The Ministers on receiving a complaint under the procedures outlined in Bill C-300 could be granted the discretion to refer the complaint to the NCP for mediation. Failing a successful mediation, the complaint process could then proceed. Even without such an amendment to the bill, a potential complainant would always have the right to seek a resolution through Canada’s NCP before formally lodging a complaint under the procedures established by Bill C-300.

³³See *OECD Guidelines for Multinational Enterprises*, Procedural Guidance, C (3) & (4).

³⁴ “Advisory Group Report – National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Sector in Developing Countries”, (March 2007), at 23.

Government of Canada's Extractive Sector CSR Strategy

The GOC CSR Strategy was released in March 2009, approximately one month after the tabling of Bill C-300.³⁵ At the time of this writing, the complaints mechanism outlined in the strategy is still in the implementation stage. Among other things, the GOC CSR Strategy establishes an “Office of the Extractive Sector CSR Counsellor” to assist stakeholders in the resolution of CSR issues relating to the activities of Canadian extractive sector companies operating abroad. The CSR Counsellor will:

- review the CSR practices of Canadian extractive sector companies operating outside Canada; and,
- advise stakeholders on the implementation of endorsed CSR performance guidelines.

Requests for review may originate from an individual, group or community that reasonably believes that it is being or may be adversely affected by the activities of a Canadian extractive sector company in its operations outside Canada. A request could also originate from a Canadian extractive sector company that believes it is the subject of unfounded allegations concerning its corporate conduct outside Canada in relation to the endorsed CSR performance guidelines.

There are several areas where the complaints mechanism established by the GOC CSR Strategy differs from that set out in Bill C-300, thereby reducing the potential for duplication:

- Unlike Bill C-300, the complaints mechanism established through the GOC CSR Strategy will have no legislative force.
- The new CSR Counsellor will only conduct a “review” with the consent of both parties. In contrast, under Bill C-300 the Ministers do not need the consent of a complained against company to consider a complaint.
- Unlike the Ministers’ powers provided for under Bill C-300, the CSR Counsellor cannot impose sanctions on a corporation for breaching CSR performance guidelines, will not review the activities of a Canadian company on his or her own initiative, and will not issue public decisions.
- Bill C-300 does not provide for a process of mediation, unlike the GOC CSR Strategy with its inherent focus on issue resolution.

The mediation function, which is absent from Bill C-300 could also be filled by the new CSR Counsellor as part of a complementary process. Indeed, if Bill C-300 were adopted, the CSR Counsellor’s role could be expanded and altered to fulfill functions under the legislation. Bill C-300 would then provide a legislative footing for that role.

³⁵ See *supra* note 4.

11. Fact-finding investigations: *Can Canadian government officials legally undertake fact-finding operations in foreign countries in response to complaints received without encroaching on the courts' exclusive adjudicative role?*

While it is far from clear that Bill C-300 actually establishes a fact-finding process in foreign countries, the question has some relevance given that s. 4(4) grants the Minister examining a complaint the power to consider, *inter alia*, evidence from witnesses outside of Canada.

The federal government's ability to adopt laws having an extraterritorial application was discussed earlier in this Report (see the answer to question 5 above). A corollary power of the federal government is the ability of its officers and agents to gather facts and evidence abroad for use in Canadian legal proceedings. For example, in its decision in *R. v. Hape*, the Supreme Court of Canada found that evidence gathered by RCMP officers in Turks and Caicos was admissible despite possible violations of the *Canadian Charter of Rights and Freedoms* by Turks and Caicos police officers.³⁶ It must be emphasized the Bill C-300 does not contemplate search and seizure powers acted upon abroad, only a discretion to consider the evidence from witnesses who come forward. It thus engages none of the dimensions of comity of nations discussed by the Supreme Court in *Hape*.

Investigations and fact-finding missions in Canadian law are carried out by the executive branch of the government, not the courts, which play an adjudicative role. While it is true that courts of first instance in Canada decide the admissibility of evidence in legal proceedings, it is the executive branch of the government that marshals facts for use in legal proceedings (as do private citizens). The courts also play an important role in clarifying the government's role in gathering of evidence abroad. This is exemplified by the Supreme Court of Canada in its decision in *R. v. Harrer*:

[I]t is obvious that Canada cannot impose its procedural requirements in proceedings undertaken by other states in their own territories. And I see no reason why evidence obtained in other countries in a manner that does not conform to our [Canadian] procedures should be rejected if, in the particular context, its admission would not make the trial unfair. For us to insist that foreign authorities have followed our internal procedures in obtaining evidence as a condition of its admission in evidence in Canada would frustrate the necessary cooperation between the police and prosecutorial authorities among the various states of the world.³⁷

³⁶*R. v. Hape*, [2007] 2 S.C.R. 292.

³⁷*R. v. Harrer*, [1995] 3 S.C.R. 596, at para. 15.

What is true of the relationship between the police and courts is true *a fortiori* of an administrative process that does not involve prosecutorial enforcement activities or judicial decision-making. Accordingly, there is no conflict between government representatives receiving evidence from witnesses abroad and the courts' exclusive adjudicative role. The same constitutional division of powers that applies domestically in Canada between the executive and judicial branches of the government applies in relation to the fact-finding missions and investigations that government representatives now routinely carry out in foreign jurisdictions. An example of such foreign fact-finding is the role of Department of Foreign Affairs and International Trade in monitoring natural disasters abroad in order to coordinate Canadian participation in relief efforts. The Humanitarian Affairs and Disaster Response Group gathers information from around the world, including from Canada's network of embassies.³⁸

12. Statutory interpretation: *Does the seemingly broad and referential nature of the definitions of some of the Bill's key terms, such as "government support", "environmental best practices", and "developing countries", render the Bill so vague as to be void and unenforceable?*

The modern practice of legislation makes significant use of "incorporation by reference." Incorporation by reference of standards is a widely recognized and legitimate method of drafting a code or a regulation in such a way that a detailed statement of technical definitions and standards is replaced in the text of the statute by reference to one or more definitions and standards.³⁹ According to law professor and statutory interpretation expert Ruth Sullivan, "[i]ncorporation by reference is used frequently in federal legislation".⁴⁰

The legal effect of incorporation by reference of an existing definition, standard, regulation or document is to write the words of the incorporated document into the regulation just as if it had been actually reproduced word for word. Incorporation by reference is merely a drafting technique, and a regulation-maker need not be granted any special power in order to resort to this technique.⁴¹

³⁸"How the Government of Canada Responds to Natural Disasters Abroad" online: DFAIT <http://www.international.gc.ca/humanitarian-humanitaire/faq.aspx?lang=eng#Q3>.

³⁹See for example "Key Considerations in the Development and Use of Standards in Legislative Instruments", *Understanding the Partnership of the Regulatory and Voluntary Standards Systems* (Standards Council of Canada, December 2006).

⁴⁰Ruth Sullivan, "The Promise of Plain Language Drafting" (2001) 47 McGill L.J. 97, at 100, n. 2.

⁴¹See the Second Report of the Standing Committee for the Scrutiny of Regulations pursuant to section 19 of the *Statutory Instruments Act*, R.S.C. 1985, c. S-22, 39th Parliament, 2nd Session.

All of the terms mentioned above and all of the other key terms referred to in Bill C-300 are defined either directly in the bill or elsewhere in another document. In those latter instances, existing definitions and standards are incorporated by reference into Bill C-300. For example, “developing countries” are defined in s. 2(1) of the bill as “countries and territories named in the list of countries and territories eligible for Canadian development assistance established by the Minister of International Cooperation”. “Corporation”, to take another example, “includes any company or legal person incorporated by or under an Act of Parliament [*i.e.*, the *Canada Business Corporations Act*] or of any province [*i.e.*, the provincial incorporation statutes]”. Other terms, such as “government support,” take their meaning from a construction of the bill as a whole, on the basis of which government support clearly and unambiguously means financial support under the *Export Development Act*, the *Department of Foreign Affairs and International Trade Act*, the *Canada Pension Plan Investment Board Act* and the *Special Economic Measures Act*.

Accordingly, all of the material terms contained in Bill C-300 have been given adequate definition directly in its provisions, through incorporation by reference, or in light of a construction of the bill’s purpose and meaning as a whole. Thus the bill, should it be enacted, is sufficiently clear and precise to be enforceable.

CONCLUSION

This Report has sought to make clear that the policy and legal foundation of Bill C-300 is sound. There are of course ways in which one could imagine Bill C-300 being strengthened in the future with more ample procedural, governance and remedial provisions. But Bill C-300 represents a significant advance for Canada and the Canadian extractive sector. It will send a clear signal that CSR is not simply in the domain of public relations or corporate largesse, but is in fact part of the framework of norms and rules that can reinforce the social licence to operate on which our companies rely, particularly as they operate abroad.

Appendix 1: Biographical Details

Professor Richard Janda is an Associate Professor at the Faculty of Law, McGill University where he teaches Business Associations, Environment and the Law, and Sustainable Development. He is an Associate Member of the McGill School of Environment and a Senior Research Fellow with the Centre for International Sustainable Development Law. Richard Janda is a coauthor of *Corporate Social Responsibility: A Legal Analysis* (Markham: LexisNexis, 2009).

Appendix 2

Comparisons of Bill C-300 and the Government of Canada’s extractive sector CSR Strategy with the six components of the Canadian CSR Framework recommended by the Advisory Group to the National Roundtables.

1. Canadian CSR Standards based on “existing international standards” that are supported by ongoing multi-stakeholder and multilateral dialogue. The existing international standards listed by the Advisory group include: The International Finance Corporation (IFC) Performance Standards and accompanying IFC guidance notes and IFC EHS guidelines; and the Voluntary Principles on Security and Human Rights. The application and interpretation of these standards shall observe and enhance respect for principles of the *Universal Declaration of Human Rights* and other related instruments.

| GOC CSR Strategy | BILL C-300 |
|---|--|
| <p>Partially consistent with component 1 of the CSR framework.</p> <p>The strategy does not establish new standards. Rather through the Strategy the GOC will “promote” the following existing international CSR performance guidelines with Canadian extractive companies operating abroad;</p> <ul style="list-style-type: none"> • IFC Performance Standards on Social & Environmental Sustainability; • Voluntary Principles on Security and Human Rights; and, • The sustainability reporting guidelines of Global Reporting Initiative. | <p>Consistent with component 1 of the CSR framework.</p> <p>The Bill directs the Minister of Foreign Affairs and the Minister of International Trade (“the Ministers”) to issue guidelines that articulate corporate accountability standards for mining, oil and gas companies (See s.5). The guidelines shall incorporate:</p> <ul style="list-style-type: none"> • the IFC’s Policy on Social & Environmental Sustainability, Performance Standards on Social & Environmental Sustainability, Guidance Notes to those standards, and Environmental, Health and Safety General Guidelines; • the Voluntary Principles on Security and Human Rights; • human rights provisions that ensure corporations operate in a manner that is consistent with international human rights standards; and • any other standard consistent with international human rights standards. |

2. CSR reporting obligations based on the Global Reporting Initiative (GRI), or its equivalent during an initial phase-in period.

| GOC CSR Strategy | BILL C-300 |
|--|---|
| <p>Partially consistent with component 2 of the CSR framework.</p> <p>The strategy does not establish CSR reporting obligations. It does, however, promote the GRI within the Canadian extractive sector.</p> | <p>Not consistent with component 2 of the CSR framework.</p> <p>The Bill does not establish CSR reporting obligations.</p> |

3. An independent ombudsman office to provide advisory services, fact finding and reporting regarding complaints with respect to the operations in developing countries of Canadian extractive companies.

| GOC's Extractive Sector CSR Strategy | BILL C-300 |
|--|---|
| <p>Partially consistent with component 3 of the CSR framework.</p> <p>The strategy does not establish an independent ombudsman office.</p> <p>Instead, the strategy establishes an “Office of the Extractive Sector CSR Counsellor” to assist stakeholders in the resolution of CSR issues relating to the activities of Canadian extractive sector companies operating abroad. The Counsellor will:</p> <ul style="list-style-type: none"> • review the CSR practices of Canadian extractive sector companies operating outside Canada; and, • advise stakeholders on the implementation of endorsed CSR performance guidelines. <p>Requests for review may originate from an individual, group or community that reasonably believes that it is being or may be adversely affected by the activities of a Canadian extractive sector company in its operations outside Canada. A request could also originate from a Canadian extractive sector company that believes it is the subject of unfounded allegations concerning its corporate conduct outside Canada in relation to the endorsed CSR performance guidelines.</p> <p>The Counsellor will only undertake reviews with the consent of the involved parties.</p> <p>The Counsellor will not review the activities of a Canadian company on his or her own initiative, make binding recommendations or policy or legislative recommendations, create new performance standards, or formally mediate between parties.</p> | <p>Partially consistent with component 3 of the CSR framework.</p> <p>The Bill does not establish an independent ombudsman office.</p> <p>Instead, the Bill directs the Ministers to receive complaints regarding Canadian companies engaged in mining, oil or gas activities from any Canadian citizen or permanent resident, or any resident or citizen of a developing country in which such activities have occurred or are occurring (see s.4).</p> <p>The Minister receiving the complaint must examine the matter described in the complaint and assess compliance with the guidelines that articulate corporate accountability standards (see 1 above).</p> <p>Requests which are frivolous or vexatious, or made in bad faith, will be declined.</p> <p>The Minister who receives the complaint may consider information from the corporation or from the public, including evidence from witnesses outside of Canada.</p> <p>The Ministers may examine a matter on their own initiative.</p> <p>Within eight months following receipt of a complaint, the Ministers shall publish in the <i>Canada Gazette</i> the results of any examination.</p> |

4. A tripartite Compliance Review Committee to determine the nature and degree of company non-compliance with the Canadian CSR Standards, based upon findings of the ombudsman with respect to complaints, and to make recommendations regarding appropriate responses in such cases.

| GOC's Extractive Sector CSR Strategy | BILL C-300 |
|---|--|
| <p>Not consistent with component 4 of the CSR framework.</p> <p>The strategy does not establish a Compliance Review Committee.</p> | <p>Partially consistent with component 4 of the CSR framework.</p> <p>The Bill does not establish a Compliance Review Committee.</p> <p>Instead, the Bill directs the Minister receiving the complaint to examine the matter described in the complaint and assess compliance with the guidelines that articulate corporate accountability standards (see 1 above).</p> <p>Within eight months following receipt of a complaint, the Ministers shall publish in the <i>Canada Gazette</i> the results of any examination.</p> |

5. The development of policies and guidelines for measuring serious failure by a company to meet the Canadian CSR Standards, including findings by the Compliance Review Committee. In the event of a serious failure and when steps to bring the company into compliance have also failed, government support (financial and/or non-financial) for the company should be withdrawn.

| GOC's Extractive Sector CSR Strategy | BILL C-300 |
|--|--|
| <p>Not consistent with component 5 of the CSR framework.</p> <p>The strategy does not establish procedures for withdrawal of government support in the event of noncompliance with CSR standards.</p> | <p>Consistent with component 5 of the CSR framework.</p> <p>The Bill includes provisions designed to bring about the denial or withdrawal of government support to companies who have acted inconsistently with the guidelines that articulate corporate accountability standards (see 1 above). For example:</p> <ul style="list-style-type: none"> • government support, such as financing and insurance, through the Export Development Corporation; • support from the Department of Foreign Affairs and International Trade (with the exception of ordinary consular services); and, • investments by the Canada Pension Plan |

6. A multi-stakeholder Canadian Extractive Sector Advisory Group to advise government on the implementation and further development of the Canadian CSR Framework.

| GOC's Extractive Sector CSR Strategy | BILL C-300 |
|--|--|
| <p data-bbox="250 485 807 537">Not consistent with component 6 of the CSR framework.</p> <p data-bbox="250 569 807 621">The strategy does not establish a Canadian Extractive Sector Advisory Group</p> | <p data-bbox="826 485 1383 537">Not consistent with component 6 of the CSR framework.</p> <p data-bbox="826 569 1383 621">The Bill does not establish a Canadian Extractive Sector Advisory Group</p> |