



House of Commons
CANADA

Standing Committee on Foreign Affairs and International Development

FAAE • NUMBER 023 • 2nd SESSION • 40th PARLIAMENT

EVIDENCE

Monday, June 1, 2009

—
Chair

Mr. Kevin Sorenson

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Standing Committee on Foreign Affairs and International Development

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• (1530)

[English]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good afternoon, colleagues. This is meeting number 23 of the Standing Committee on Foreign Affairs and International Development on Monday, June 1, 2009.

In our first hour, we are going to continue our study of Bill C-300, An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries. We have today, from the Department of Foreign Affairs and International Trade, Louise Léger, director general, trade commissioner service, client services. Welcome. We also have Donica Pottie, director, democracy and war economies division; Sabine Nölke, director, United Nations, human rights and economic law division; and Sara Wilshaw, director, trade commissioner service support.

I understand the director general has an opening statement. Then we'll proceed with questions about this bill.

Again, thank you for coming to our committee today.

Ms. Louise Léger (Director General, Trade Commissioner Service - Client Services (BSD), Department of Foreign Affairs and International Trade): Thank you very much, Mr. Chair, for the opportunity to speak to you today.

Having served abroad in Colombia, Switzerland, and Israel and as a Canadian ambassador to Panama and Costa Rica, I can tell you firsthand that corporate social responsibility, or CSR, is an issue of great relevance to Foreign Affairs and International Trade Canada, both at headquarters and in our diplomatic missions around the world. The department plays an active role in supporting Canadian companies to develop and implement CSR practices and in fostering uptake of these principles within Canadian corporate culture. As you are aware, our departmental priorities include advocating and supporting respect for freedom, democracy, human rights, and the rule of law. The Prime Minister has directly, and often, reiterated these priorities.

Another key departmental priority is promoting and achieving greater economic opportunity for Canada, with a focus on growing and emerging markets. The department pursues a global commerce strategy to secure Canada's growth and prosperity. This does not mean we promote Canadian companies at any cost. We believe strongly in a win-win approach and that Canadian investment can and should contribute to prosperity and sustainable development in other countries. Having 150 missions across Canada and around the world allows us to pursue this growth and prosperity for Canadians and the Canadian economy.

With respect to the role of the Government of Canada in the area of corporate social responsibility, the trade commissioner service performs several key roles, including advising and counselling companies on Canada's CSR expectations and referring clients to relevant and applicable information tools and guidelines.

Canada's approach to CSR is to encourage and expect Canadian firms operating abroad to respect all applicable laws and international standards and to reflect our values and international commitments. Canada also supports and encourages the Canadian business community to develop and implement CSR standards, tools, and best practices. There is, however, a limit to what companies can provide to support the social, health, environmental, and education concerns of the communities in the sovereign states within which they operate. Host governments are responsible for legislation and programs that meet the needs of their own citizens. Foreign corporations must operate within that domestic legal framework.

Canada also engages on CSR-related issues at a variety of multilateral fora, including the Organization for Economic Cooperation and Development—the OECD; Asia-Pacific Economic Cooperation—APEC; G-8; la Francophonie; the Organization of American States—the OAS; and the United Nations.

Through the engagement of DFAIT, Canada has supported the work of the special representative of the UN Secretary-General on business and human rights, Dr. John Ruggie, since 2005, and welcomed the release of his report, “Protect, Respect and Remedy: a Framework for Business and Human Rights”, in 2008.

In light of the importance of CSR, the Government of Canada continues to enhance the ability of our trade, political, and development officers in Canada and abroad so that they have the information and tools they need to provide timely and effective CSR counsel and advice to our companies operating abroad. To this end, DFAIT has

[Translation]

First, trained trade and political officers including departing Heads of Missions with respect to CSR policies, guidelines and standards.

Second, created an internal intranet website which is at the disposal of all missions abroad and regional offices in Canada as the primary vehicle for guidance on CSR.

Third, created a \$180,000 CSR fund which is a resource for missions and regional offices to foster and promote CSR.

Fourth, issued CSR e-bulletins on a monthly basis from headquarters to all the missions with the latest CSR news from headquarters and around the world to keep the missions informed of the latest CSR developments.

And lastly, created an Internet CSR website which contains a significant amount of information about the department's activities and policies.

Most companies understand that CSR has become a critical part of doing business, and that in order to be credible, CSR principles must be embedded within core business strategies and corporate culture. This is reflected in the concept of "earning" the social licence to operate. We understand that it is also essential to obtaining financing.

[English]

The government's new CSR strategy, "Building the Canadian Advantage", was developed through consultations undertaken with a number of stakeholders, including the national round tables as well as recommendations raised by the Standing Committee on Foreign Affairs and International Trade in its 2005 report entitled "Mining in Developing Countries—Corporate Social Responsibility".

● (1535)

A number of federal departments and agencies contributed to its development, including Natural Resources Canada, the Canadian International Development Agency, Industry Canada, Environment Canada, Indian and Northern Affairs Canada, Justice Canada, Human Resources and Skills Development Canada, and Finance Canada, as well as Export Development Canada.

Canada's new CSR strategy builds on Canada's long-standing adherence to the OECD guidelines for multinational enterprises, which contain recommendations for voluntary performance standards for responsible business conduct.

Since 1999, the Department of Foreign Affairs and International Trade has been home to Canada's national contact point, or NCP for short, which is responsible for promoting awareness of the OECD guidelines and reviewing reports of specific instances of non-compliance with these guidelines. The NCP provides a mechanism for dispute resolution. Canada's NCP is set up as an interdepartmental committee, which I presently chair.

With respect to Canada's new CSR strategy, it is founded on four key pillars. The first pillar calls for continuing assistance from CIDA for the governments of developing countries to enhance their capacity to manage natural resources in a sustainable and responsible manner. Resource governance, transparency, and accountability in developing countries are critical to ensuring that the extractive sector contributes to poverty reduction. These factors are also essential to creating a business environment that is conducive to responsible corporate conduct in countries where Canadian companies operate. This first pillar builds on existing initiatives where CIDA has played a key role. For example, in Peru, CIDA has worked extensively with

the Peruvian government, mining companies, and affected communities to develop regulatory requirements for social and environmental management.

The second pillar of this strategy calls for the promotion of internationally recognized voluntary CSR performance and reporting guidelines. In addition to our continued support for the OECD guidelines, the government will promote the following international CSR performance guidelines.

First are the International Finance Corporation performance standards on social and environmental sustainability for extractive projects with potential adverse social or environmental impacts. These are the de facto performance benchmarks for projects in developing countries that require substantial financial investments.

Second are the voluntary principles on security and human rights for projects involving private or public security forces. At the 2009 plenary in Oslo, Canada was welcomed to this process as the first engaged government under the new participation framework.

Third is the global reporting initiative, or GRI, for CSR reporting by the extractive sector to enhance transparency and encourage market-based rewards for good CSR performance.

These widely recognized international standards will form the basis for Canada's commitment to supporting continuous improvement in the CSR performance of our extractive sector companies operating abroad.

The third pillar of this strategy involves support for the development of a new CSR centre of excellence. In order to address CSR in their operations, Canadian companies need information, education programs, and tools. This one-stop shop would provide information for companies, non-governmental organizations, and other relevant stakeholders. We're currently in discussion with the Canadian Institute of Mining, Metallurgy and Petroleum, CIM, in Montreal, to provide a home for the CSR centre of excellence, which will work with stakeholders to develop the centre.

Finally, the fourth pillar of this strategy calls for the creation of the office of the extractive sector CSR counsellor. This office would be responsible for providing assistance in the resolution of social and environmental issues related to Canadian extractive sector companies operating abroad. The counsellor will review and document the CSR practices of Canadian extractive companies operating abroad and advise stakeholders on the implementation of CSR performance guidelines. Requests for review by the counsellor may originate from an individual, group, or community, or their representatives, who reasonably believe that it or they may have been adversely affected by the activities of a Canadian extractive company outside Canada. The counsellor will undertake reviews with the consent of the involved parties.

● (1540)

This consensus-based approach will help facilitate constructive and meaningful engagement among stakeholders toward finding a sustainable resolution to CSR-related concerns.

The counsellor will issue a public statement after each review, including on requests that could not be completed because there was no agreement amongst the parties to proceed. The counsellor will also submit an annual report to be tabled in Parliament by the Minister of International Trade.

We anticipate that the advertisement for the counsellor's position will be published in the *Canada Gazette* in the next few weeks, and we are aiming to have the position filled by September 2009.

In conclusion, "Building the Canadian Advantage" strategy represents a comprehensive step in defining our role in supporting and promoting responsible corporate practice.

Thank you, Mr. Chair. We'd be pleased to answer the committee's questions.

The Chair: Thank you, Ms. Léger, for your opening statement.

I just want to ask you if you've had an opportunity to take a look at Bill C-300.

Ms. Louise Léger: Yes.

The Chair: Because none of your opening statement really looks forward to Bill C-300; it looks back to where we are currently.

But you're all prepared to answer questions in regard to the new legislation before us? Thank you.

We'll move to the opposition, and Mr. Patry.

[Translation]

Mr. Bernard Patry (Pierrefonds—Dollard, Lib.): Thank you very much, Mr. Chair.

Thank you to today's witnesses. I will be sharing my time with Mr. Pearson, and Mr. McKay.

Ms. Léger, in your opening statement, you talk about four pillars. The fourth pillar of the strategy calls for the creation of the Office of the Extractive Sector CSR Counsellor. This office would be responsible for providing assistance in the resolution of social and environmental issues related to Canadian extractive sector companies operating abroad. You will also advise using CSR practices.

However, on the last page, you state that the counsellor will not undertake reviews without the consent of the involved parties. From what I understand, if a party does not agree to being subject to a review, regardless of the mining company concerned, this means that there will be no review.

[English]

Ms. Donica Pottie (Director, Democracy and War Economies Division, Department of Foreign Affairs and International Trade): It is true that the CSR counsellor could not proceed with an investigation if either party decided they didn't want it to continue. So in the case where the CSR counsellor might receive an allegation from the local community, the counsellor would then approach the Canadian company and ask the Canadian company whether it would be willing to proceed to the next step.

If the Canadian company says no, then the counsellor would issue something in writing on the counsellor's website, and it would also go into the counsellor's report to Parliament that this allegation had been received and that the company had declined to allow the

counsellor to be involved in trying to understand the facts and do some informal mediation.

We feel that making public the fact that the allegation was received and the company declined to proceed will have a consequence for the company. Many companies, of course, or most of our companies, do want to resolve their CSR disputes with local communities or individuals and would agree to allow an issue or an allegation to proceed, but if they didn't, there would be a written record and that would be made public.

• (1545)

[Translation]

Mr. Bernard Patry: Ms. Léger, you also said that the Department of Foreign Affairs and International Trade created a special fund worth \$180,000 which is a resource for missions and regional offices to foster and promote CSR.

This is not a lot of money, considering that there are 150 consulates and embassies located throughout the world. This barely amounts to \$1,000 per establishment. What will you do with the \$180,000? For me, this is peanuts: we can't do anything with \$180,000. You can create an intranet website and a bunch of things, but on the ground, in countries where Canada does not have a consulate or embassy, what can we do?

Ms. Louise Léger: I must clarify that the \$180,000 is being used exclusively abroad or by our regional offices. The other tools that we have just presented will be financed through our own funds. As these resources are to be used exclusively for the extractive industry, many of our missions abroad can be eliminated.

Last year, we were still able to hold an impressive number of seminars and conferences, often with other partners. In those cases, the only costs that applied were the transportation costs of our invited experts. Often, our missions organize one or two-day conferences in collaboration with local governments and civil society. During these conferences, we promote corporate social accountability and the obligations our companies must fulfil in that context.

With very little money, we have also been able to organize 20 or so different presentations in Africa, and primarily in Latin America, presentations which are ongoing this year. We have \$180,000 each year.

The missions give us concrete proposals of what they wish to do. I believe that the maximum amount allocated to each project is perhaps in the order of \$10,000, but the average is \$7,000 to \$8,000 per initiative; these events attract some 100 to 150 people, and rooms are filled to capacity.

[English]

The Chair: John.

Hon. John McKay (Scarborough—Guildwood, Lib.): Thank you.

I'm on subsection 5(1), "Limitations of Authority" and it says "The Counsellor shall not review any activity that occurred before the day on which the first Counsellor was appointed."

Am I reading that correctly, that any current activity cannot be investigated by the counsellor?

Ms. Donica Pottie: You are reading that correctly. There's no provision to grandfather.

Hon. John McKay: So any activity, no matter how egregious, that is occurring today could not be investigated?

Ms. Donica Pottie: There's no grandfathering provision in the CSR strategy. However, if it is continuing on the day the counsellor is appointed, then it could be investigated from that period onward.

Hon. John McKay: The counsellor may review an issue or receive a request from an individual group or community that may be adversely affected. So if the individual group or community is not adversely affected, i.e. it isn't a part of that community, can it initiate a complaint?

Ms. Donica Pottie: The paragraph you read is almost meant to be read in the reverse. The idea is that if communities believe they could be adversely affected, or if they have concerns in advance of a mining operation really being present on the ground, they can come to the counsellor in advance of a problem. The point of that was just to enable the counsellor to engage companies and communities early on in the development cycle of a mining operation to try to avoid problems.

Hon. John McKay: But if I'm an NGO, for instance, and I observe something on the ground, it seems to me that I would not be able to complain to the counsellor. Is that correct?

Ms. Donica Pottie: Sorry, I misunderstood your question.

Representatives of individuals or communities that are affected can make representation on behalf of that community. So Canadian NGOs who are active on these issues could represent a community and bring forward a specific instance or a case for the counsellor.

• (1550)

Hon. John McKay: You have a section in here that says they will not initiate or undertake a review without the written express commitment of the parties involved. You indicated in your response to Mr. Patry that even in the middle of an investigation, the company could withdraw its consent. Is that correct?

Ms. Donica Pottie: There are four separate stages to the process. The first stage would be that the counsellor would receive a letter or some form of communication and would then go to the company. And I should add here that it could happen in reverse. Companies can decide that they're subjected to frivolous and vexatious complaints. But in the more standard way of thinking about it, an NGO or a community or an individual could come to the counsellor. The counsellor would approach the company to see if it was willing to let the counsellor first embark on informal fact-finding. That could include going to the place itself and interviewing people, talking to people, and trying to figure out what's happening. After the informal fact-finding, if the counsellor feels that informal mediation is warranted and would help in this situation, then the two parties would be asked whether they agree to proceed to that step. If informal mediation doesn't succeed in coming up with a game plan forward to resolve the situation or to mitigate the situation, then the counsellor would ask whether the parties would like to be put in touch with a formal mediation process, with the expertise that could formally mediate.

Hon. John McKay: Unfortunately, my time is up, but I want to—

The Chair: It is, yes. We'll get back to you on a second round.

[*Translation*]

Ms. Deschamps, you have seven minutes.

Ms. Johanne Deschamps (Laurentides—Labelle, BQ): Good afternoon, ladies.

As concerns the strategy that the government has had us talking about recently, it is a far cry from the recommendations in the round table report; however, extraordinary work has been done in the last two years. Among many things, 104 submissions were tabled, 156 oral presentations were made, 50 experts were invited to participate, and there were more than 101 hours of public hearings with the public and experts. A consensus has nonetheless emerged from these consultations, and recommendations were presented to government that are not necessarily part and parcel of the strategy it is now proposing.

When the government unveiled its new strategy, it claimed that the strategy was based on consultations with various stakeholders. Who was consulted, and how were the consultations carried out? We still had to wait for two years to go by before the government responded to the round table reports. What approach did the government use and which groups were consulted? I am not entirely convinced that it consulted the round table reports.

Page 2 of your statement reads as follows: "Host governments are responsible for legislation and programs that meet the needs of their citizens [...]." This is all very well, but in Africa, some countries have no government structure, and most companies operating there are wealthier than the emerging country itself.

How can we encourage those governments to adopt legislation that meets the needs of their citizens, when CIDA has allowed eight African countries to fall by the wayside as it assists others, for reasons known only to the government. I don't know how we could support them. I am referring specifically to Africa, because some countries there have no structure in place and societies are at the mercy of corruption.

Ms. Louise Léger: If I may, I will answer your second question. Ms. Pottie can talk to you a bit more about consultations with civil society.

In many countries, when foreign investors arrive, it happens too often that local, even national governments will wash their hands of these regions. In other words, a company wants to invest, and all of a sudden it becomes responsible for building schools, roads, setting up health care services, and providing basic services that all governments must ensure their citizens. Countries, or local governments, often say that when a foreign company arrives on the scene, it has to act. I have even witnessed a case of a community that became completely and utterly dependent on a project because it provided basic services that had absolutely nothing to do with the project. In addition, the local governments located three provinces away claimed that their power plant had broken down, and since the company was present and providing electricity, it should build a new thermal plant.

We have clearly seen that there are companies that choose to invest in certain communities, fulfil their duties and provide what they are obliged to provide, but they must not replace local governments. Everyone knows that one day a project must come to an end—fortunately the most serious companies will always have an exit strategy—but when that happens, there will no longer be a school, there will no longer be a clinic, there will be nothing. We advise our companies to carefully choose the projects and initiatives that a community will benefit from. We also advise them to be careful and to not replace local governments.

A very large number of additional consultations were held in a more targeted manner. I myself took part in some of these consultations at the end of the round table, and many associations were consulted. Some companies were consulted more extensively. Our people working abroad were consulted, and we asked them what the local governments' and foreign governments' expectations were. There was that aspect as well. I know that this committee has undertaken additional consultations with civil society. We can therefore involve the same groups that have been participating since the beginning, but proceed in a more in-depth manner.

• (1555)

[English]

The Chair: You have one minute.

[Translation]

Ms. Johanne Deschamps: Talk to us about Bill C-300. We have not had the opportunity to hear you speak on that bill. You were invited here for that reason.

Do you have an opinion?

[English]

Ms. Sara Wilshaw (Director, Trade Commissioner Service Support, Department of Foreign Affairs and International Trade): Not so much as bureaucrats do we have opinions about it, but rather we've tried to look at it from the point of view of how it could be implemented, how it would function. I think from that perspective there were a number of points on which we thought we needed maybe additional clarification. And there were some things we were not sure about how they would work. So I think we've looked at it from that perspective.

Does that answer your question? I'm not sure what your question exactly was in terms of Bill C-300.

The Chair: Because we're out of time on this round, maybe some of those points will be drawn out from others here.

Mr. Abbott, please.

Hon. Jim Abbott (Kootenay—Columbia, CPC): Thank you.

Thank you to our witnesses.

I think one important thing to say before we get into any questions is that I don't believe there is one single, solitary person in this room, possibly in Ottawa, possibly in Canada, who does not want to see corporate social responsibility. The question is, how do we arrive there? That is the question.

With that in mind, I'm wondering if you could give us an idea... Because of the reputation that Canada holds as a leader in human

rights and our promotion of that, we want to be out on the leading edge. But I am curious, to your knowledge are there any countries that have adopted mandatory regimes for CSR in the world at this point?

Ms. Sara Wilshaw: To the best of my knowledge, Danish legislation requires mandatory CSR reporting for companies of a certain size. Some countries require a certain percentage of revenues to go towards CSR activities. That's the extent of CSR legislation around the world, as far as I know. Generally speaking, CSR is not legislated, partly because it's so vast. It covers environmental issues, labour issues, and human rights issues. In this country, it requires a number of shared jurisdictions between the provinces and the federal government, so it's very difficult to legislate as a whole. There is also the question of companies operating overseas, which could result in an extraterritorial application of the law.

• (1600)

Hon. Jim Abbott: I'm trying to get at the idea behind Bill C-300. I'm not trying to be pejorative. I'm just trying to describe what I see here. We're talking about various ways that the government, through its agencies or crown corporations, can bring pressure on corporations. Is there an equivalent to that elsewhere?

Ms. Sara Wilshaw: No, sir.

Hon. Jim Abbott: This would be ground-breaking, then?

Ms. Sara Wilshaw: Yes, sir.

Hon. Jim Abbott: Under the current regime, there will be reviews of parties concerned, a report on the website, a report to Parliament, and a written record that will be made public. Subclause 4(6) of Bill C-300 says that “the Ministers shall publish in the *Canada Gazette* the results of any examination undertaken pursuant to this section within eight months following receipt of the complaint.”

It strikes me that this provision of Bill C-300 is pretty well a carbon copy of what currently exists. What Bill C-300 does is take it to the next level—it anticipates how these crown corporations would react.

Ms. Sara Wilshaw: Yes. What distinguishes Bill C-300 is that it creates a mandatory set of guidelines, whereas CSR in international circles is generally understood to be voluntary, with different applications for different companies in different places. It is broadly accepted to be voluntary. In this case, these would be mandatory guidelines, with consequences for non-compliance.

Hon. Jim Abbott: In other words, there is a lack of flexibility with respect to the local situation. Is that a fair assessment?

Ms. Sara Wilshaw: I wouldn't be able to judge that.

The Chair: Ms. Brown.

Ms. Lois Brown (Newmarket—Aurora, CPC): Thank you, Mr. Chair.

And thank you for being here this afternoon.

We heard from Mr. Rae last week that Bill C-300 would create a very litigious situation. I think this should concern all of us. What I'm hearing from you today is that the Canadian government has been proactive in putting together this Advantage Canada and that we are in the process of putting together guidelines. I think that's a positive step. What I'm also hearing from you today is that there is a symbiotic relationship between CIDA and some of the companies going into countries. There is a cooperative effort going on.

If there is a complaint against a company, and many of these Canadian companies are part of our Canadian Pension Plan Investment Board, would there be any influence on whether these companies would be able to get insurance later on? If so, what impact would that have on them as a company?

• (1605)

Ms. Sara Wilshaw: I'm sorry, can you clarify a bit? Is that their ability to get insurance through EDC?

Ms. Lois Brown: Well, through anyone. EDC would be one of the insurers.

If a complaint is brought forward, will that impact the ability of those companies to get insurance?

A voice: Yes.

Ms. Sara Wilshaw: I wouldn't want to speculate on whether or not other institutions would follow suit, but certainly EDC would be placed, I think, in quite a great deal of difficulty.

Ms. Lois Brown: Which means that any of their further involvement in that country would be at risk.

Ms. Sara Wilshaw: Possibly.

Ms. Lois Brown: Okay.

Thank you.

The Chair: Who's next?

Mr. Goldring, you only have about 20 seconds, so we'll come back to you.

Mr. Dewar.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, Chair.

Thank you to our guests.

I've been parsing out what we have from the government and what's proposed in Bill C-300. I note that there is an issue with the government's proposal where....

It takes two to tango, if you will, and it takes two to make the process really fulsome, correct? In the bill that has been proposed by Mr. McKay, there is an oversight to ensure that both sides comply, if you will. Is that your reading of it, that both sides participate?

Ms. Sara Wilshaw: I haven't read in here anything that would compel participation.

Mr. Paul Dewar: Well, maybe I should put it this way: what do you see as the role of the standards in Bill C-300 vis-à-vis how they would be administered—in other words, how people would have to comply?

Ms. Sara Wilshaw: From my understanding of what the bill says, the minister would conduct an examination or an investigation into the complaint, including, as it says here in subclause 4(4), "evidence from witnesses outside of Canada".

Mr. Paul Dewar: Correct. So there is, if I could put it this way, the power to have the minister look into a situation without compliance from the company.

Ms. Sara Wilshaw: Without compliance from the company, yes. The consideration, though, is how that would be done outside of Canada. Generally in international law it's understood that if you are going to investigate in another country, that constitutes an enforcement activity.

Mr. Paul Dewar: Right.

Ms. Sara Wilshaw: We would normally go through their courts for that.

Mr. Paul Dewar: But "to investigate" can also mean that you don't have to go to court, correct?

Ms. Sara Wilshaw: Yes, but we would normally ask the courts of the host government—

Mr. Paul Dewar: No, I understand your point. I understand the issue. I'm asking a different question—namely, would this bill as contemplated allow the minister to actually do an investigation without the compliance of the company? It's a very simple question.

Ms. Sara Wilshaw: Right; yes.

Mr. Paul Dewar: So that's correct. Thank you.

I also note, notwithstanding your point, that we also, through the Special Economic Measures Act, dictate terms to companies as well, at times, when it's seen fit. Is that correct? SEMA allows the cabinet to actually set terms for companies as to where they invest?

Ms. Sabine Nölke (Director, United Nations, Human Rights and Economic Law Division, Department of Foreign Affairs and International Trade): Yes, that is correct.

Mr. Paul Dewar: Thank you.

Some people have concerns, as has been noted, about Canada as a government setting terms for investment of Canadian companies overseas. Would it not be correct to say that we already do that when it comes to SEMA?

Ms. Sabine Nölke: Within the confines of SEMA, the investigations happen in Canada.

Mr. Paul Dewar: Correct, but my question is a different one. My question is that, with SEMA, the Government of Canada can set terms as to Canadian companies' investments overseas?

Ms. Sabine Nölke: That is correct, yes.

Mr. Paul Dewar: Thank you.

I say that because some people would argue that this is something new in terms of Canada having some involvement in Canadian investment overseas. So I think it's an important point to note.

Has anyone looked into the administration of legislation in other jurisdictions that comes close to CSR? To be very specific, are you following any of the bills going through Congress right now looking at investment of the extractive industries overseas? I see someone nodding there.

I'm particularly interested in your take on Bill S.891 in the United States. I'd like to hear your point of view on that. I'm referring to the Congo Conflict Minerals Act. Can you shed some light on how you see that vis-à-vis legislation that we might have here? Or is there anything like it here in Canada?

• (1610)

The Chair: Ms. Wilshaw.

Ms. Sara Wilshaw: Thank you.

My understanding of Bill S.891, the Congo Conflict Minerals Act of 2009, is that this is an act introduced recently—the end of April, if I'm not mistaken—and it has been referred to committee, so it's at quite an early stage in the process. It's an act designed to stop the illegal trade in resources, and specifically three resources. I can only remember the name of one. I think it's wolframite. There were three minerals in particular. It will require reporting by companies that use these minerals, on the origin of those minerals, and if the origin of those minerals is from the Democratic Republic of Congo, they then have to disclose the mine of origin.

Mr. Paul Dewar: This is, as you said, fairly nascent. Thank you for that.

I simply wanted to point out to the committee and others that we're not in isolation in terms of working on this issue a little more assertively. I think it's important to note that. In fact, what I like about the approach of the round table, which was reported to government more than two years ago, is that it is comprehensive. Certainly from my perspective, I would prefer a comprehensive approach rather than any other.

But I simply wanted to note that other jurisdictions are moving ahead, looking at this important issue of the extractive industries and how they affect local economies and people. I think this is something that's happening south of the border that should give us cause for attention, to ensure we are perhaps doing something a little more fulsome. I think most Canadians would like to see that.

Thank you for your help today.

The Chair: Thank you, Mr. Dewar.

We'll go back to the government side.

Mr. Goldring.

Mr. Peter Goldring (Edmonton East, CPC): Thank you, Mr. Chairman.

Thank you for appearing here today, ladies.

The question I have is fairly elementary. It's back with the definitions. When I review Bill C-300, I see here under the definitions what appears to be a disclaimer, saying what isn't included in the extractive definition.

I suppose the other thing I question here with extractive is this. If this is really meant for corporate social responsibility with Canadian

industry in foreign countries, why would it have left out forestry products or forestry and logging operations? Why would they be excluded? When I'm reading the definitions here of Bill C-300, it looks as though there are a whole number of issues here that are eliminated from the definition.

Could you comment on that, please? Shouldn't we have a corporate social responsibility for all forms of industry of extractive...whether they be above ground or below ground, to be consistent?

Ms. Louise Léger: We were asked to comment on the bill, and Sara said we have identified a number of areas where we ourselves have further questions. That would definitely be one of them, where we would need some clarification as to what is meant by that paragraph, in particular, what is included and what is not.

Mr. Peter Goldring: Yes, because I'm seeing here “petroleum, natural gas, bitumen, oil shales, limestone”. I'm going through an entire list of these, and a lot of these are major extractive enterprises by Canadian organizations. But the fact that it left out the forestry products is seemingly another huge one. I would think in some areas 50% of Canada's extractive efforts would be the above-ground forestry.

Ms. Louise Léger: There's also a reference to the OECD guidelines on multinationals. That one is all-inclusive, not just the extractive sector but all sectors, so that whether the investment is in textiles, for example, or mining, if that's the benchmark, if it's the OECD guidelines for multinationals, then it's everything.

Mr. Peter Goldring: In reviewing under the definition through to the second part here, it says under subclause 4(3):

If the Minister who receives the complaint determines that the request is frivolous or vexatious or is made in bad faith,

And then it repeats again, “the Minister shall provide reasons for this determination”.

I would think that would be an extremely difficult thing to do unless you conducted a complete and full investigation. In other words, you're calling for an investigation. Would that not lead some competitors in competing countries to put forward complaints or put forward issues? How many extractive companies do we have? How many different ones, how many competitive ones, might consider that a method to besmirch another company in the field, by simply putting in an accusation that would be sometimes very difficult to determine whether it is vexatious or frivolous?

• (1615)

Ms. Louise Léger: Absolutely. It's fair to say that when it comes to the extractive sector, Canada has a huge presence. In fact, about 60% of all the different projects in the world have a Canadian angle to them. That's why the provisions in the strategy go both ways. If a company feels it's being wrongly accused or keeps being the subject of different accusations, the company itself can ask the counsellor to look into whoever is putting up these complaints.

What I have found on the ground is that when you have cases where companies are accused, rightly or wrongly, there is an admission of how pleased they are that there's an independent source that can verify. A company can say, "I'm quite happy to follow whatever rules. In many countries there is no mining code or rules. I do the best I can. I get accused and I can't win because I am a company saying I didn't do"—

Mr. Peter Goldring: You're labelled.

Ms. Louise Léger: —“what I'm being accused of having done.”

If somebody from the outside comes in, takes a look, and sees that the company has complied with everything it was expected to comply with, there's an opportunity for the company to be cleared of any of these accusations. Now there's nothing out there, whether good or bad, if a company is accused. Often there's nowhere for that company to go to seek redress.

The Chair: Thank you.

We'll go to the opposition.

Mr. McKay.

Hon. John McKay: Mr. Goldring seems to be concerned about the limitations of Bill C-300 to the extractive sector. Why has the government limited itself to the extractive sector?

Ms. Donica Pottie: Thank you for the question. I think it all stems from the 2005 report of the Standing Committee on Foreign Affairs and International Trade. It notes quite correctly that Canada's involvement in the international extractive sector is enormous, and since that sector requires vast investments and is often quite long term in situ, it needs a special look.

Hon. John McKay: So the answer to Mr. Goldring's question is that the government is concerned about the same thing that Bill C-300 is concerned about. Is that fair?

Ms. Donica Pottie: We are certainly concerned about the extractive sector.

Hon. John McKay: If I were legal counsel to a mining company, which is not likely going to happen any time soon, why would I, under any circumstances, consent to an investigation by the counsellor?

Ms. Donica Pottie: There are many reasons. You might consent because you really believe you've done due diligence and you want a chance to demonstrate that you've done the best you can with imperfect information. You might consent because it can be very difficult for companies to continue to operate in environments where the local community is not supporting their operations. You would have an opportunity for informal mediation, and whoever the counsellor is becomes really important to its success.

Hon. John McKay: We agree that who the counsellor is will be rather critical. But on the other hand, you start an investigation and maybe it finishes 10 or 18 months later. Lots of bad things can happen in that time. Yet you are still going to publish a report saying that an investigation was commenced and the consent was withdrawn at the beginning, the middle, or even the end. How can that be fair to the company that may withdraw its consent for reasons that have nothing to do with the investigation? You're prejudicing the process to begin with, but you're also prejudicing the companies that may very well withdraw consent for good reasons.

• (1620)

Ms. Donica Pottie: The counsellor would have the authority to decide how to term that. If he thought there were good reasons, he could say that. But we can't have a counsellor operating without being accountable, through the minister to Parliament, for what he does, and therefore needing to report on every instance.

Hon. John McKay: But he is accountable to the minister and Parliament.

Ms. Donica Pottie: You're assuming that at some point in the process the company withdraws consent. But if we're successful, informal mediation would lead to a plan of action or a way to mitigate whatever the complaint was, and that would finish it. The consent would not be withdrawn. There would be an action plan.

Hon. John McKay: But that's a fairly big “if”. There are readily imaginable circumstances where the company may not wish to proceed with the investigation, and yet it will see its name published, with no ability to get any recourse.

My final question before I turn this over to my colleague is with respect to extraterritoriality.

The Chair: You have to hurry.

Hon. John McKay: With respect to extraterritoriality, when Norway has a human rights screen, is it mandatory? Is it extraterritorial when Norway withdraws from investing in particular companies? Is the proposed legislation with respect to the U.S. concern extraterritorial?

Ms. Sara Wilshaw: No, sir, not in my understanding.

Hon. John McKay: All right, and I would respectfully submit, neither is Bill C-300.

The Chair: Be very quick.

[*Translation*]

Mr. Bernard Patry: Thank you very much.

[*English*]

You are also a specialist of the round table. I just want to know if you can identify the elements of the government's CSR strategy that depart from those of the round table, and could you try to explain the rationale or justification for such departures?

Ms. Donica Pottie: I can try.

One area of difference, of course, which all of you would have noticed, is that we don't use the term “ombudsman”; we've chosen “CSR counsellor” instead. While the powers of the CSR counsellor position largely mirror the powers requested or recommended by the advisory committee, the way we've structured it is that we don't have an independent tripartite review committee. And the government selected to go through the minister to Parliament and to have oversight happen that way, instead of through a tripartite review committee.

There were also requests by the advisory committee to condition certain government services based on CSR compliance, and the government decided it would not accept those recommendations—or it didn't accept those recommendations. So that aspect is not in the government's CSR strategy.

The Chair: Thank you.

I do have a question, and I'm just going to use a little of the prerogative of the chair to ask it.

Mr. Abbott suggested at the beginning that there isn't a person in this room, and indeed probably in this city, who doesn't want good CSR standards set. I think we all agree on that; all of us understand the importance of Canada being a model to countries around the world.

However, I also have a few concerns, and one of my concerns is that we're going to hurt the ability of some of our Canadian mining and other corporations to succeed. I think good foreign policy recognizes the importance of putting in place standards so that Canadians can prosper at home and abroad. I think that's what we all want. We want to be certain that once we are out and around the world trying to prosper, we're also laying down standards for CSR as we go.

You mentioned that if there were problems or a complaint were brought forward presently, we would approach the company and the company would then have to give the go-ahead as to whether or not it should proceed. Is there a great lineup of companies that say no, don't proceed?

Ms. Louise Léger: No.

The Chair: Okay, so this isn't a situation where time after time companies say no, don't proceed.

There is a process and it seems to be working. Is that correct?

Ms. Louise Léger: We have never had a case where a company said no.

The Chair: All right, so when it's been brought forward, the company recognizes what would happen if this were publicized or made public, and they say no, we want to comply. Correct?

Ms. Louise Léger: That's right.

The Chair: You've said you have a number of other concerns about Bill C-300. Can you tell us what they are?

•(1625)

Ms. Sara Wilshaw: Beginning with some of the definitions, we did start on some of them. In subclause 2(1), under "Interpretation", you talk about a "corporation" including "any company or legal person incorporated by or under an Act of Parliament or of any province." We're not clear about whether this means Canadian companies that are incorporated in the host country or whether they are Canadian companies that may be partnered with or under joint venture with another company in another country.

Again under "Interpretation", when you go into "developing countries", it refers to a "list of countries and territories eligible for Canadian development assistance" as "established by the Minister of International Cooperation." CIDA has informed us that there is no such list, and it's not clear to us whether this bill purports that the minister is to create such a list. This would also have foreign policy implications if we were to create such a list. There is a list of countries that currently receive ODA, but that list changes each year, so there is no list of countries that are "eligible" to receive ODA.

We understand, when you talk about "international human rights standards" means standards that are based on international human rights conventions to which Canada is a party and on international

customary law", that this is referring to treaties and obligations that are obligations on states and are written, to quote Dr. Ruggie, "by states for states" and are not easily translatable for corporations. In fact, Dr. Ruggie, who is the special representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, has reported on April 22 to the Human Rights Council exactly what I said, that these are treaties that are written by states for states, and even the experts on human rights do not clearly understand their meaning for business. We would have some difficulty there, I think, in establishing those kinds of guidelines.

As is mentioned under "mineral resources", there is a non-exhaustive list of those that are not included here, but it needs some clarification.

When the bill refers to "mining, oil or gas activities" including the transportation of the product out of a developing country or on the high seas controlled directly or indirectly by a Canadian company, this is a very broad definition. There could be unforeseen consequences up and downstream, companies that are related, so we're not entirely sure of the full extent of the impact there. Would it include soil remediation companies that maybe would be called in after the fact by a mining operation for cleanups? It's very broad.

When we get to the interchangeable use of...the Minister of Foreign Affairs and the Minister of International Trade are used interchangeably in this. The interchangeable nature is somewhat confusing and could lead to a duplication of efforts and resources. It also leaves the accountability somewhat unclear to us.

When we turn to the "Purpose", clause 3 talks about "corporations engaged in mining, oil or gas activities and receiving support from the Government of Canada". That support would probably need to be defined better for us. We're not entirely sure what the extent of that support would be, although there are obviously hints of it in the consequential amendments.

There's also a reference here to "environmental best practices". We're not sure which environmental best practices are being referred to here. There's no body or standard cited in the rest of the bill. Generally, we refer to CSR best practice where there are internationally recognized standards out there.

The Chair: Unfortunately, I'm going to have to interrupt. I appreciate the fact that the list is long.

Ms. Sara Wilshaw: I haven't really got into the bill.

The Chair: Can I ask you to please get into the bill and to send back what you're basically commenting on now, in written form?

Ms. Sara Wilshaw: Certainly.

The Chair: I think those are all very good. I wish we had got into them a little earlier. Unfortunately, our time is up. We only have one hour, and I hate to cut you off.

I want to thank you very much for coming. Again, we want to give due diligence to this bill and take a look at all the ramifications. Many are good, but there may be many we're unsure of.

Thank you for coming and helping us to decide today. We look forward to those submissions in writing.

We'll suspend for a few minutes, and then we'll ask our next guest to please take his position.

• _____ (Pause) _____

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• (1630)

The Chair: Good afternoon.

In our second hour today we're going to have a briefing on legal issues concerning a committee's powers to have individuals appear here before our committee. As our witness, we have, from the House of Commons, Rob R. Walsh, the law clerk and parliamentary counsel.

All honourable members will know Mr. Walsh. He's been of great assistance to members over the years. I was actually quoted in the *Globe and Mail* here this past week on this. A reporter was trying to get out what was in the letter, although he seemed to have some understanding of what was in the letter, and he quoted me as saying, "We value Mr. Walsh's opinion and look forward to having him appear before the committee on Monday". I did that to try to persuade him not to question me any further on the issue.

But I sincerely mean it. I think all parties recognize your expertise, and we're confident that you'll live up to your reputation here today.

I also want to thank you for responding with that letter. It has been an issue that our committee has debated over the last little while. We certainly were looking for sound advice, and you've given it, I think. You may have some comments. I don't know exactly how you want to proceed with this, Mr. Walsh, but you may have comments in regard to the letter you sent us, and the follow-up as well. Then the different parties, I'm sure, will want to ask some questions of you.

Mr. Walsh.

Mr. Rob Walsh (Law Clerk and Parliamentary Counsel, House of Commons): Mr. Chairman, I don't have an opening statement apart from pointing out to members, if they haven't received the follow-up letter, that I'm guilty of an oversight in not noting that a certain decision of the Federal Court to which I referred, in which section 10.1 had been ruled unconstitutional, was later reversed by the Federal Court of Appeal and section 10.1 was found to be constitutional. It's a provision that's found in the passport order.

I have only one other point. In my opinion letter I make reference to two other actions in the Federal Court of Canada by Mr. Abdelrazik. In fact there are three other actions, not just two, but that's really neither here nor there for today's purposes.

I'm ready to answer any questions members may have, Mr. Chairman. I don't have an opening statement.

• (1635)

The Chair: Thank you, Mr. Walsh.

We'll move into the first round of questioning.

Mr. Patry.

Mr. Bernard Patry: *Merci beaucoup.* Thank you very much, Mr. Walsh.

I read it a couple of times, because as a medical doctor and not a lawyer, it's quite difficult sometimes to understand your text.

I'm just going to ask you one question. If this committee wants to keep going and have the witness come to Canada, what's left for this committee? This committee, in my understanding, needs to pass through the House of Commons, to Parliament, and Parliament can say so. But Parliament doesn't have any power to recall him to Canada; it's the government that can do it.

Is my understanding right?

Mr. Rob Walsh: That's correct, Mr. Chairman.

Mr. Bernard Patry: What's left for us? Just going that way, or what?

Mr. Rob Walsh: Well, essentially, what's always the primary course for a committee is to go to the House with its problems and seek the House's support to join with the committee and encourage the government, if not forcefully demand the government, to facilitate the return of Mr. Abdelrazik to Canada for purposes of the business of the committee.

Mr. Bernard Patry: That's it. I have no more questions. It's very clear.

Thank you.

The Chair: We'll move to Madame Deschamps.

[Translation]

Ms. Johanne Deschamps: Ms. Lalonde has the floor.

Ms. Francine Lalonde (La Pointe-de-l'Île, BQ): That is fine.

I read your letter, and as was stated earlier, this committee seems to have no way of forcing the return of Mr. Abdelrazik.

The first page reads as follows: "... include a House order to the person demanding that the person appear before the committee, failing which the person (the witness) could be found in contempt of Parliament. This process is set out at page 861, Marleau and Montpetit." I did not check Marleau-Montpetit. I should have, but I had a very busy working weekend.

Does this not open a door?

Mr. Rob Walsh: Not really, Mr. Chair, because this is normal procedure as regards witnesses who are not willing to appear before the committee of their own free will. This is a House order. If a witness is very reluctant to appear, the person could be found in contempt of Parliament, but this order is not applicable outside Canada. Mr. Abdelrazik lives in Sudan. The order, therefore, would have no effect.

Ms. Francine Lalonde: So really, that means if Parliament were to ask him to come, and he did not appear, there would not even be any consequences. Is that what you are saying?

Mr. Rob Walsh: It is possible, but it is not very useful.

Ms. Francine Lalonde: There would not be any consequences.

Mr. Rob Walsh: Exactly, there would be no consequences.

Ms. Francine Lalonde: So, I will ask the question again: what could we do?

Mr. Rob Walsh: It is the same answer.

Ms. Francine Lalonde: Perhaps by the third round of questions, you will give us.

Mr. Rob Walsh: Perhaps you can persuade the minister to go and get Mr. Abdelrazik, so that he appears before you.

In my opinion, this decision is solely up to the minister and the Government of Canada, and not yourself. I am sorry to say so, but there is no way of forcing Mr. Abdelrazik to return and appear before this committee.

Ms. Francine Lalonde: Is this in keeping with the spirit of Parliament, in your opinion, as someone who has an academic understanding of the issue?

Mr. Rob Walsh: The spirit of Parliament?

Ms. Francine Lalonde: Yes.

Mr. Rob Walsh: Generally speaking, one hopes not. The government and the House of Commons have positive relations.

However, occasionally, I would presume that there are issues that push the government in one direction, and parliamentarians in another; differences emerge between the two.

I cannot explain everything that way, but in this particular case, according to the public comment made by Minister Cannon, it is obvious that he is determined not to assist Mr. Abdelrazik to return to Canada.

Perhaps I am mistaken, but according to the comments that I have heard, it is clear that the minister does not agree with helping Mr. Abdelrazik return to Canada, pursuant to section 10.1 of the order, for reasons of national security.

• (1640)

[English]

The Chair: Thank you, Mr. Walsh.

Mr. Abbott.

Hon. Jim Abbott: Thank you, Mr. Walsh.

I'm presuming I have to exercise a fair level of caution, being a parliamentary secretary, and perhaps the government members do too, because the matter is before the courts. Mr. Abdelrazik has filed legal action against the Government of Canada.

Given this, on page 3 you state that you were careful in not commenting on some aspects of this case. To what extent would this ongoing litigation limit what Mr. Abdelrazik could bring to us at a committee hearing, if he were to be available? Does that have any implications, the fact that he has filed?

Mr. Rob Walsh: The issue of Mr. Abdelrazik getting to Canada is one issue, and it is before the courts, as you say. Perhaps this committee has some other interests in talking to Mr. Abdelrazik—I'm not sure. If the only interest the committee has in Mr. Abdelrazik is his inability to get to Canada, then that issue is, as you say, before the courts, and one ought to allow the courts to consider the matter before the House makes a comment of a kind that prejudices the outcome of the action.

Hon. Jim Abbott: Now, you are counsel, but you are not Mr. Abdelrazik's counsel. I don't know if you can comment on this. If you were advising him, are there any aspects of the case that he has

brought that you would advise him to stay away from in testimony before the committee?

Mr. Rob Walsh: A witness who has a case in court shouldn't come before the committee and make essentially legal arguments. This committee is not a place to make legal arguments. So I would hope Mr. Abdelrazik's counsel would advise him that if he is before this committee, he is not to use the opportunity before the committee to essentially argue the case he has before the courts. Presumably he's before the committee for other reasons, to discuss or address other issues. I'm not sure. But here before the committee wouldn't be the place for him to argue his legal case.

Hon. Jim Abbott: Now it's interesting that you brought up the issue of why the committee is seized with this. Mr. Dewar is going to be following me, and I'm sure he'll be able to make any comments that might correct what I'm saying here. I think this is really an effort to create a pressure point on the government to overturn the position they have taken with respect to Mr. Abdelrazik in bringing him back to Canada.

That's it, quite simply. I don't know if some of my colleagues may have some questions for you.

The Chair: Mr. Lunney.

Mr. James Lunney (Nanaimo—Alberni, CPC): Actually I don't have any particular questions here, other than to say that I appreciate your report and you giving us your opinion in a number of helpful areas.

I thought it was interesting that you pointed out here that the House does not have the requisite authority or legal power to compel the government to repatriate a Canadian citizen, whether through issuance of a passport or by providing transportation. Further, the embassy is a Canadian territory, but the Vienna Convention on Diplomatic Relations does not provide that the embassy be considered Canadian territory for all purposes, but rather only for diplomatic purposes under international law.

So I appreciate your drawing those distinctions, because we've had some discussion here as to what we can and cannot do based on some of those assumptions. We certainly appreciate your clarification. Is there anything further you would like to add about that in terms of the territory issue?

• (1645)

Mr. Rob Walsh: While I think I'm correct in what I've said in my report to you regarding embassies as Canadian territory, it might be instructive or helpful to the committee to hear from persons in the Department of Foreign Affairs, who are obviously quite expert in the matter of embassies. Or, if you want to stay with the Department of Foreign Affairs, there might be professors of law who study international law and who can speak more thoroughly on that question. I have given you the basic principles here.

Mr. James Lunney: Well, I think we find that quite helpful, so I would just express my appreciation that you have raised those points for us.

The Chair: Thank you, Mr. Lunney.

Mr. Dewar.

Mr. Paul Dewar: Thank you, Chair, and thank you, Mr. Walsh, for helping this committee.

I want to start off by underlining the fact that I wasn't really involved in asserting that you needed to give us an opinion as to whether the committee can force the minister to provide documentation. I was more interested in the ability of the minister to provide a travel document to Abousfian Abdelrazik, under 1267. You've noted it, and we received a brief of some 28 pages along with an annex that in fact said the minister, under 1267, can provide a travel document to Mr. Abdelrazik.

Mr. Rob Walsh: I would think so. That's the Library of Parliament paper you're referring to. I read that, and I think that paper identifies that, in a legal action perhaps, the minister or the government is raising the argument that it's impossible to get from there to here without transgressing over someone else's territory, and therefore that's the impediment to coming home, as opposed to any impediment presented by the Canadian government. I just don't know whether actually or geographically that's the case, or if you have to get on a boat and row your way across the water to get to Canada to avoid.... I just don't know the geography of all that. But essentially, I agree with what the Library of Parliament brief tells you in that regard.

Mr. Paul Dewar: In other words, to put a ribbon on it, the minister can provide the travel document to Mr. Abdelrazik.

I would just ask for the indulgence of the committee for a second. I have here letters, which I think are important, from both the RCMP and Jim Judd, who state the following:

This correspondence is in response to your letter dated October 24, 2007, requesting assessment of the RCMP information as it pertains to Mr. Abousfian Abdelrazik. Your letter outlined the guidelines established by the UN Al Qaida and Taliban Sanctions Committee for listing an entity/individual. As Mr. Abdelrazik is currently a listed individual, you further requested whether the RCMP had any current and substantive information to support the continued listing.

Please be advised that the RCMP conducted a review of its files and was unable to locate any current and substantive information that indicates Mr. Abdelrazik is involved in criminal activity.

Similarly, another letter to Mark Moher, the senior coordinator of International Crime and Terrorism, from Jim Judd, says:

This letter refers to your correspondence dated October 24, 2007 concerning the petition for the de-listing of a Canadian citizen, Mr. Abousfian Abdelrazik, who is included in the United Nations Al Qaida and Taliban Sanctions Committee Consolidated List. Mr. Abdelrazik voluntarily

—and this is important—

departed Canada for the Sudan in March 2003. The Service has no current substantial

—I'm reading because it's photocopied and it's rather dark—

information regarding Mr. Abdelrazik.

I have a document here regarding Mr. Abdelrazik that I received through an ATI from the government. It basically says in the talking points—and I don't usually hear from the parliamentary secretary—that the response we have for Mr. Abdelrazik is that:

Canada remains ready to provide Mr. Abdelrazik with the necessary consular and financial assistance should be allowed to board a flight and return to Canada.

And finally, I do have a similar document from the minister, from DFAIT, and it says with regard to Abousfian Abdelrazik:

DFAIT's position has always been that a travel document can be issued to Mr. Abdelrazik.

I'm simply submitting, maybe not for your edification but perhaps for the record, that we have the Department of Foreign Affairs stating to the minister of the day—granted, it was a different minister—that DFAIT's position is that a travel document can be issued, and that we have the RCMP and CSIS declaring, after there was a request to provide information on Mr. Abdelrazik, that they have no evidence of any concerns in terms of criminal activity.

I note, under section 10.1, which you referenced, that the minister can refuse. I guess the question that's outstanding, which neither you nor I can answer right now, is, based on what evidence, since we have DFAIT, we have the RCMP, and we have CSIS all saying they don't have anything, and this gentleman left on his own for Sudan and has been stranded there since 2003?

So, Chair, I'm at the point where, unless there's any evidence, and I'd like to know.... Certainly from our research and from your statement in your letter, the minister can provide a travel document to a witness that we've asked—I'd just like to ask you, as the chair, to formally request from Mr. Cannon a travel document so that the witness can come before committee. That has not been done. As a member of this committee, I would request you do that, to facilitate a witness to be able to come before committee. We've scheduled that for June 15.

I thank you, Mr. Walsh, for your help on that, but I make a request to you, Chair, to have correspondence written to the minister to provide Mr. Abdelrazik with the necessary travel documents so that he may come before committee on June 15. It can be a motion, but I note, Chair, that we did have a motion that was passed by this committee, a unanimous motion, to have Mr. Abdelrazik appear. Because of abstentions, it was the unanimous consent of the committee.

•(1650)

I'm simply requesting that you write to the Minister of Foreign Affairs to provide Abousfian Abdelrazik with the necessary travel documents so that he might appear before committee.

The Chair: I think you're going to have to have a motion for that. I'm not likely to do that out of the desire that I would have to see Mr. Abdelrazik appear before our committee, but if there were a motion requesting me to do it—

Mr. Paul Dewar: Consider it a motion, but I'm curious about your response.

The Chair: I think the minister has been here a number of times saying—

Mr. Paul Dewar: We've never formally asked him as a committee.

The Chair: He's been asked day after day in the House of Commons. He has said he will not be providing that document.

Maybe I'll just leave it at that. I'm not likely to do that unless I have a motion.

Mr. Paul Dewar: Okay. I'm just asking you as the chair to simply facilitate a witness coming before committee.

The Chair: That's part of what we're doing here right now. We're trying. We've asked for a legal opinion on what we can do. We've asked the minister if he's going to provide the travel documents. The minister has said no.

Mr. Paul Dewar: If I may, this committee has not.

The Chair: No, but he has been asked. He's given a fairly clear indication in question period in the House.

Mr. Paul Dewar: With respect, I've never asked him that in the House.

The Chair: Mr. Abbott.

Hon. Jim Abbott: Has Mr. Dewar provided that motion?

Mr. Paul Dewar: I will, and I don't need unanimous consent to do so because we're on topic; it's relevant. I thought it was a very straightforward thing. I didn't know it required a motion to ask a chair to write to a minister to facilitate a committee.... Maybe I should get Mr. Walsh's opinion on that—but I won't do that to him.

I move the motion to have the chair write to the Minister of Foreign Affairs to ask him to provide the necessary travel documents to Abousfian Abdelrazik, a Canadian citizen who is stranded in Sudan since 2003. It's so moved.

The Chair: Mr. Abbott.

Hon. Jim Abbott: I would like to speak to the motion very briefly. This is like going down the furrow for the 65th time. It gets a little deep.

I don't think I need to recite everything, except to state the obvious, which is that the whole purpose of this action, the whole purpose of this motion, is to have Mr. Abdelrazik come back. Whether he can offer something of significance or value to the committee is probably something that we could sit here and debate for an extended period of time. The whole point of the motion, the whole point of Mr. Dewar's action, is to attempt to force the minister and the government to do something they're not inclined to do. It's that simple. As a consequence, obviously, the members of the governing party will be voting against this motion.

• (1655)

The Chair: Mr. Pearson.

Mr. Glen Pearson (London North Centre, Lib.): Just speaking to the motion, I have real trouble with it because we're not getting answers as to why he's not being brought back. Every avenue is being exhausted, and I understand that. I understand the frustrations. I understand the government side.

From our side, I think we have a responsibility to exhaust every option that's out there. We might very well ask the minister to comply with this request and he might very well say no. However, this is an important issue to us, and I think Mr. Dewar has brought up something that's urgent to all of us here. I think we have a responsibility to put this forward in a motion and put it to a vote. I'm fully in support of that motion.

A Canadian is stuck somewhere else; he is a Canadian citizen, and all these options are being exhausted. We're sitting here at a pretty major committee within Parliament and we can't seem to come up with any solution as to what to do about a person trapped there because somebody has said there's a reason and therefore he can't

come. I didn't get elected to come here thinking that was possible. I guess it is, and legally maybe it is.

I think it should be put to a vote. I think we should have the ability to either support or negate Mr. Dewar's motion.

The Chair: Madame Lalonde.

[*Translation*]

Ms. Francine Lalonde: As regards Mr. Dewar's motion, I would have liked to see the committee vote. I would like to get back to Mr. Abbott's argument. I put questions countless times to the government and the Minister of Foreign Affairs on this matter, and as a response, it has always raised the famous list. Yet we have been informed that this list does not prevent Canada from bringing Mr. Abdelrazik back to the country, in fact, it is the opposite. I believe that the government's honour would be restored if it were to agree to reopening the subject.

You may tell me to save my breath because you will not change your mind. However, I would like to know who was around during the Maher Arar affair. I, for one, was here from the beginning to the end of that affair. There were so-called certainties surrounding the terrorist acts he allegedly committed. In one way, the charge against Abdelrazik is less serious than the one that Maher Arar faced. I insist on this, knowing that you are people of goodwill. Perhaps you even share my point of view. Try nonetheless to convince those people, on your side.

In a way, it could save Canada's reputation, which, because of the Maher Arar affair, has taken a beating. Add the Abdelrazik affair and it will be worse. There is no certainty in the case against him. A UN official pointed out to us that the famous list does not in any way prevent bringing him back to question him either before committee or in other interrogative proceedings, so long as they are appropriate. It would be beneficial for the government to do so. It is not only on the eve of an election... I may be unable to convince you, but I would like to.

• (1700)

[*English*]

The Chair: Madame Lalonde, I'm not certain it's fair to say there is equivalency between Maher Arar and Abdelrazik.

Ms. Francine Lalonde: There is no equivalency.

The Chair: There is no equivalency, so I'm not certain that the comparison is one that's correct.

The other thing I still battle with in my own mind, without prejudicing this whole exercise, is whether we really want to hear from Abdelrazik. Is that really what we want? Is that really what the opposition want? Is it that we want to hear from him or is it that we want to get him to Canada?

Mr. Paul Dewar: It's both.

[*Translation*]

Ms. Francine Lalonde: We want both.

[English]

The Chair: It seems to me that the predominant reason the committee is going through this exercise is to get him out of Sudan to Canada. If it's that we want to hear him, we can facilitate that. We can facilitate it through video conferencing. We've done it in Afghanistan, we've done it in any.... But that's not what the opposition is asking for, even right now.

Mr. Paul Dewar: Chair, with respect, as the chair, you know—

The Chair: With respect, as a chair I'm being asked to write a letter on behalf of the committee, so I would like to know the primary reason we want to hear from him. Madame Lalonde says we have questions. Well, if we have questions, if Madame Lalonde's primary interest in this is to question him and to hear the answers to those questions....

Ms. Francine Lalonde: We want to help him in his defence.

The Chair: But if it's to simply get him to Canada, that's something a little different, you know.

Mr. Paul Dewar: But with respect, Chair, I—

The Chair: I can't do it unless it's a point of order.

Mr. Goldring, then Mr. Lunney, and then Ms. Brown.

Mr. Peter Goldring: Thank you very much, Mr. Chair.

I would agree with your statement that video conferencing certainly would give a venue to have certain questions answered. But really, even if he was to appear here, could you answer all the questions that seem to have risen on this? A lot of the questions go well back into his past, apparently. Did he come to Canada as a refugee? My understanding is that he possibly did, and if he did, he's been back in Sudan several times since.

I can respect your comments, Mr. Walsh, and thank you very much, but you commented that it's inappropriate to make comments on the submissions by this gentleman because it's before the courts right now, and that's an additional complication that we have here too. We can follow this back through too. We don't know what is in his background, and I don't think we would find that out by speaking to him directly. That will come out through the basis of what other court actions are under way, and maybe even then some of the allegations that have been made under the Anti-Terrorism Act, or whatever act they're under, or the no-fly, never will be able to come out.

So in order to be able to simply listen to him, if the action is to bring him back to Canada, I don't think this is the appropriate thing to be doing at this time. I think the appropriate thing to be doing at this time is deciding whether or not we would have a discussion with him by video conference. But I really don't see how we're going to be able to get to the bottom of all of the questions we might have, even on a video conference.

The Chair: Mr. Lunney.

Mr. James Lunney: Thank you, Mr. Chair.

I appreciate that the members around the table are trying to be reasonable. I know everybody's concerned, particularly on this committee, about human rights and how Canadians are treated, both at home and abroad. But I think the members opposite know full well that at this time this particular matter is before the court. There

is a limit as to what can be said in a public setting, which Mr. Walsh has correctly indicated.

I think the minister has clearly indicated.... It was a very clear exchange between Mr. Dewar and the minister at the last meeting, where the question couldn't have been posed more clearly, Mr. Dewar, and you have an answer. I doubt very much that a letter is going to change that at this time, and I think members need to respect that the matter is before the courts and let it rest there until it's resolved in that venue.

• (1705)

The Chair: Thank you, Mr. Lunney.

Ms. Brown.

Ms. Lois Brown: Thank you, Mr. Chair.

My question really needs to be directed to Mr. Walsh, if you wouldn't mind.

Mr. Walsh, you said that the matter is before the court and there are many things that can't be spoken about, and you indicated that even if Mr. Abdelrazik was before the committee, you would think that his counsel should advise him not to speak about issues. So my question is, other than talking about the weather, what issues could he speak with the committee about without implicating the court case?

Mr. Rob Walsh: Again, I'm not intimately familiar with Mr. Abdelrazik's history or his record, etc., but I would imagine he could well speak to the foreign relations committee about this UN regime of regulations and no-fly lists and what it did to him and how he disagrees with it, and he might urge the committee to examine that matter, as Canada is a member state of the United Nations.

In other words, what this indicates is that there may be broader issues that Mr. Abdelrazik or this committee might want to pursue that don't go directly to the issues that are before the court relative to his inability to get back to Canada. There could be other issues in which he has an interest, and the committee has an interest, and the committee may want to pursue with Mr. Abdelrazik and with others and for which reason the committee wants to speak to him. How you do that obviously is the committee's business. But it's the actual issues before the court.

I should add that I made the suggestion about how, if I was counsel to Mr. Abdelrazik, I would advise him he ought not to do that, because the courts don't like parties before them going elsewhere and making public arguments about the case, as if in that manner they're going to somehow influence the outcome of the court case. That shows a disrespect for the courts. Of course, what's said to a committee is not ever before the court, because it's parliamentary privilege. But all the same, if it gets into the public domain and it's out there being discussed, maybe the other counsel might object or make the argument that this is an inappropriate use of the parliamentary process to be arguing that case.

The more important consideration is the committee. What can the committee say in view of the *sub judice* rule. The *sub judice* rule, as you know, is a voluntary rule of the House where its members are asked to not comment in debates in the House or debates in committee on matters that are before the courts. It's with that rule in mind that I would think the committee might want to avoid going into those issues that for Mr. Abdelrazik are before the courts, but there may be broader issues.

Ms. Lois Brown: However, we would be doing a very careful dance.

Mr. Rob Walsh: That could be, depending on how broad the subject is that you're discussing.

Ms. Lois Brown: Thank you.

The Chair: Thank you, Ms. Brown.

Mr. Dewar.

Mr. Paul Dewar: That's helpful. But I think Mr. Walsh has also underlined that it's not a matter of whether or not we can; it's what would happen if Mr. Abdelrazik appeared and the conduct that would happen. I think there are many things this committee would like to know.

Does it not trouble anyone on the government side that we've had a Canadian citizen stranded in a far-off country since 2003? Does it not concern the government? I guess I direct this through you, Chair, to Mr. Goldring. He was concerned that maybe there's information we don't have access to. Well, this is the part that is the most disconcerting. We have CSIS, the RCMP, and indeed the Government of Sudan who have all said they don't have any information on this gentleman. There are no charges against him. None. Zero. There is nothing against this gentleman. I think it's incumbent upon this committee that we deal with this Canadian citizen who is stranded in one of our embassies. To do that I would like to have him before committee, and I would simply like to follow process here.

My asking a question, and it didn't get the back and forth that I was able to follow through with, with respect, at committee, last time we had the minister here—I won't go through all that. I want due process, where, as chair, you write to the minister to ask for the requisite documents so he can appear. That's without prejudice. We have a witness, the witness needs travel documents, and we ask the minister. It's pretty straightforward. It's just like that.

I think when you consider what I've read into the record today and the fact of that one other item I received through access to information from the government, that indeed the reason—and this is new for a lot of people—he was put on the list was that the U.S. at the time requested it... We have no idea, based on what information. We know in the past that the U.S. has been given certain information from our sources. And in the case of Arar, there is a similarity, because the information that was passed to them was not accurate and it cost him dearly, and it cost Canadians, actually, financially.

In the case of Mr. Abdelrazik, I don't know how much more probing one does beyond CSIS and the RCMP. I think it's important for us to understand what happened to him. And I think it's important for us to at least go through the process of asking the minister to provide the travel documents.

So I leave it there. The motion is there, and I appreciate the support of all my colleagues on this motion.

Thank you.

• (1710)

The Chair: Again, the question that's brought forward is, how did he get on the list? You'd like to ask these questions, yet we could do that by teleconferencing. The purpose, really, that I battle with is simply to leapfrog the UN no-fly list and get him home come hell or high water—

Mr. Paul Dewar: Can I make a clarification, Chair? You're not leapfrogging the UN process. I think Mr. Walsh has established that today. The excellent briefing notes—

The Chair: There is a provision, you're right.

Mr. Paul Dewar: There are two provisions.

The Chair: There is provision for the minister to provide the necessary documentation.

Maybe a question to Mr. Walsh is, and again maybe Mr. Dewar would know the answer, how often does this happen? How often does it happen where a name is put on that list and governments...? I know there are appeals, and in some cases there have been appeals where people have been removed from the list.

In this case he has had an appeal and it was declined. They, one would assume, would look at the evidence that's brought forward. They would say that this individual has appealed. They would know that the RCMP and CSIS have no evidence. The home country, the country that he's a citizen of, has no substantive information against him, yet they continue. And it's not just one government sitting at that table, it's a number of different representatives from different countries, yet they declined the appeal.

What's the fallout from...? Go ahead.

Mr. Rob Walsh: Mr. Chairman, I don't have specific information as to the frequency of persons getting themselves off the list through appeals or this sort of thing. You gave a scenario of perhaps the committee receiving evidence. I'm not so sure that it's an evidentiary-based process. I say that I'm not so sure. I'm not an expert in this area. Perhaps officials who are experts could advise you on this.

The UN, in my view, often works based on member states' wishes as opposed to evidentiary due process. I'm not so sure that it isn't the case that a member state could say, regarding Mr. X or Mr. Abdelrazik, "No, don't take him off." And that word is enough and he doesn't get off, and no reasons are given. I'm not so sure that the UN calls upon its member states to justify their positions, but rather says, "What is your position? What do you invoke? It's national security? End of story, he's on the list."

I don't know that for sure. I'm telling you that it is my suspicion that this is the way it works. I don't know that you ought to assume that it's an evidentiary process in which due consideration has been given to the fact that there's no evidence against the man. It may be that it's not a weighty consideration. It may be noted, but I'm not so sure that it's a decisive consideration.

The Chair: Mr. Walsh, you said in your letter to us, “In my view, as a matter of law, the House, and certainly not a Committee of the House, does not have the legal authority or power to direct the Government to effect the return of a Canadian citizen to Canada from a place outside Canada.” This motion basically is saying that we're going to try that anyway.

• (1715)

Mr. Rob Walsh: My letter was talking in terms of legal power to compel, and I'm saying that it has no legal power to compel the government to do this. The House, on the basis of a committee report, could speak in language suggesting compulsion and force and demand and so on, but the government would not be legally obliged to adhere to that demand. Having said that, whatever else the House might do by way of urging or letters or beseeching, all those avenues, of course, are available to either this committee or to the House or to individual members, as the case may be. The point in my letter was to say that there's no legal power to compel the government to act in that fashion.

The Chair: There's no legal power to direct the government to bring a person before this committee.

Mr. Paul Dewar: Chair, to be clear, I opened my comments by stating that. There was no surprise for me when the letter came back the way it did. There was lack of clarity on UN Resolution 1267, and I was very uncertain about it. I simply wanted to establish whether the minister can provide that document, and, yes, the minister can. There are two ways. One is to apply for an exemption. It takes about five days. We heard from Mr. Barrett and some people through the media, but also directly, that there is a way to apply for an exemption. The government has already applied for an exemption, and that's to provide Mr. Abdelrazik with \$100 a month per diem. They've already done it. You can apply for an exemption to allow someone to apply, but you don't even have to do that. There are two methods: provide the document and let him fly, or apply for an exemption. So it can be done either way.

When you ask whether others have, yes. We don't have exact numbers, but we know of at least 18 other people who have travelled.

The Chair: From which countries did they travel?

Mr. Paul Dewar: Some of them, I think, were in the background material I had. I can provide that. But I don't think it influences whether we should request it, and that's getting back to my point. All I want to do is request, formally, that the minister provide the document. I was just giving you background information, because you asked.

Finally, to note, it's very rare—and Mr. Walsh is right, because one member state can just say no, it doesn't want to have the person delisted—to have a person's name removed. In fact, the most successful cases have been cases of people who have actually died. Then they have finally taken the name off. Note that Nelson Mandela didn't get off the list any time soon. Mr. Arar is still on the no-fly list to the United States. So I think that's important to note. Do whatever you want with it, but it's information.

I think requesting, not demanding—I never said demand—is where I'm coming from.

The Chair: We'll have Mr. Abbott and then Ms. Lalonde.

Hon. Jim Abbott: As we've discussed, the report speaks for itself. I think the legal opinion is clearly stated, and we thank Mr. Walsh for that. I think it's been helpful and instructive. No matter how many years I'm here, it seems to me that we keep on learning things.

I believe the minister has been very clear on his position towards Mr. Abdelrazik, and as I stated, we're going to be supporting the minister in voting against this motion.

The Chair: Ms. Lalonde.

[*Translation*]

Ms. Francine Lalonde: I would like you to wait and hear me speak first.

Earlier, Mr. Walsh talked about the substantive nature, or lack thereof, of the reason why Mr. Abdelrazik is on the list. He said, I heard it loud and clear, and it will be in his testimony—that it is not necessarily for a substantive reason: a party, or a country can state that it does not want him to be removed.

That means that, even though we know that it is quite likely that there will be no American base to keep him there, the government does not want him to return to testify. It appears to me that something is not right.

I was reflecting upon this earlier. I talked about Maher Arar, but I also saw William Sampson. Mr. Sampson is furious against Canada: he was in prison in Saudi Arabia, and he ultimately had to turn to Great Britain to get him out of there. He was freed and was not charged.

I think all of this must be considered as a whole and we must give him the benefit of the doubt. If only there were a clue, some kind of evidence, but there is not any! Apparently, it is impossible to get one's name removed from the list, unless one is dead, and even that is not certain. So I think we can still try and convince Mr. Cannon.

• (1720)

[*English*]

The Chair: Thank you very much, Ms. Lalonde.

Anyone else on this?

Mr. Pearson.

Mr. Glen Pearson: Finally, I'm not trying to be difficult, Mr. Chair, but I—

The Chair: No, I don't find you to be difficult at all, Mr. Pearson.

Mr. Glen Pearson: If it were personal, if it were my son or your daughter in this situation, we would be climbing the walls because we couldn't get the information we required. So I'm admitting to you openly that I want to get Mr. Abdelrazik here. That's true. That's part of the reason I'm supporting this. I have no doubt about that. If it was my son, I'd do exactly the same thing. I don't like the circumstances he's in. That's what I'm talking about.

All that Mr. Dewar is requesting is that you ask the minister to do it. We all know what the answer will be. But if I were a father, I would never be content if I didn't try to the nth degree to do it—to us on this side anyway, but hopefully to some on the other side. This is a situation none of us would be in. If Jim Abbott were there, I would be fighting tooth and nail to get Jim Abbott back here. And that's the truth.

The Chair: Do we want to take a vote on that?

Mr. Glen Pearson: And you know that's true.

Now, we might have opinions about Mr. Abdelrazik. Maybe some of you have already arrived at those. But this is a Canadian citizen.

All Mr. Dewar is asking is for you to write that letter. That's all. We know what the answer will be. Let's be honest, we all know what the answer is going to be. For our sake, we have to try everything that's in our power to do so. Unfortunately, we're in your hands, whether you will do that or not. But I would certainly hope you would at least let it come to a vote, Mr. Chair.

The Chair: All right.

Mr. Paul Dewar: Just one last point. In part of the note that I read into the record, it does state—and this is from the government—that on July 31, 2006, Mr. Abdelrazik was listed by the UN's 1267 committee at the request of the U.S. People were asking how he ended up there. That's how he ended up there.

The Chair: All right. We will call the question. Mr. Dewar has moved that the chair write to the Minister of Foreign Affairs requesting him to provide travel documents to Mr. Abdelrazik.... We'll get the blues and get the correct one.

(Motion agreed to)

The Chair: The clock is at 5:25.

First of all, thank you very much, Mr. Walsh, for your research and the work you've done in the writing of the letter and for being here today. When we requested that you come, we weren't exactly certain what your letter would contain. So we were glad you were able to come and explain it, and if anyone had further questions, to do that. So thank you very much.

For those who are on the steering committee, we are going to have a steering committee meeting tomorrow at 9 o'clock. One of the reasons for that is there are budgets that should be looked at before the summer break, so that we can have witnesses appear before both our committee and the subcommittee on human rights. There will be a few other agenda items to put down as well before our break for the summer.

Thank you very much.

Madame Lalonde.

[*Translation*]

Ms. Francine Lalonde: Was there not the issue of electing a vice-chair on the agenda?

[*English*]

The Chair: Friends, sit down, please. We're going to just move quickly into committee business for one moment here.

With the resignation of Monsieur Crête, we are now missing one vice-chair of this committee, so we would like to fill that position.

Does someone have a nomination for a replacement for Monsieur Crête?

• (1725)

[*Translation*]

Ms. Johanne Deschamps: I have the pleasure of nominating Ms. Lalonde.

[*English*]

The Chair: Madame Deschamps nominates Madame Lalonde, who has served in this capacity in the past.

Are there any other nominations?

(Motion agreed to)

The Chair: It's unanimous. We congratulate Madame Lalonde for that great title of vice-chair of the foreign affairs and international development committee.

We're adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

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