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EVIDENCE

**Tuesday, October 20, 2009**

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**Chair**

**Mr. Kevin Sorenson**



## Standing Committee on Foreign Affairs and International Development

Tuesday, October 20, 2009

• (0900)

[English]

**The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)):** Good morning, colleagues. This is meeting number 33 of the Standing Committee on Foreign Affairs and International Development, on Tuesday, October 20, 2009.

Our orders of the day include a return to our committee's study of Bill C-300, An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries. As witnesses in the first hour today, we are pleased to have, from the Department of Natural Resources, Stephen Lucas, assistant deputy minister, minerals and metals sector; and also Ginny Flood, director general of the minerals, metals and materials policy branch.

I invite you to make your opening testimony, and then we will proceed into rounds of questioning.

Madame Lalonde, you had asked for time in committee business at the end of the first hour, and we will definitely leave time for committee business. Did you want that for today and Thursday, or for Thursday?

[Translation]

**Ms. Francine Lalonde (La Pointe-de-l'Île, BQ):** There was a break week. I was hoping that it would be today but the clerk explained that we had a lot of work.

It would have to be Thursday, if possible at the beginning of the meeting, because we have several important motions and the moment when those motions are passed is also important.

[English]

**The Chair:** We will definitely leave time on Thursday, then, for committee business, if that is all right with everyone else. It looks so far like we have agreement on that, so that's what we'll do. We'll just put off committee business till Thursday.

So welcome here. From the Department of Natural Resources, Mr. Lucas, the floor is yours.

**Dr. Stephen Lucas (Assistant Deputy Minister, Minerals and Metals Sector, Department of Natural Resources):** Thank you, Mr. Chair. I have provided copies of my remarks in both official languages and I'll present a somewhat abridged version of them.

Thank you very much for the opportunity to speak to you today. My opening remarks will focus on Canada's mining sector and corporate social responsibility, given my responsibilities at Natural Resources Canada as assistant deputy minister, minerals and metals.

There are currently over a thousand Canadian mining companies and exploration companies working in over a hundred countries around the world on well over 5,000 projects. According to Statistics Canada, Canadian direct investment abroad in the mineral and metals sector from 1990 to 2008 was \$66.7 billion. There are also another 2,400 Canadian technology consulting service and supply companies that work with the mining sector firms here in Canada and around the world.

[Translation]

As we know from our experience in Canada and from countries around the world, mineral exploration and development can create jobs and other local benefits, including training, business opportunities and infrastructure improvements, as well as contributions to social and economic advancement through local CSR programs.

• (0905)

[English]

or CSR in English.

[Translation]

Tax and royalty payments to government may also be generated. Furthermore, mining operations contribute to the local economy through the procurement of materials and a range of services.

[English]

The contributions to both local communities and developing countries that can result from mining activities are significant. Chile is a prime example. I certainly acknowledge that there are challenges, including those that stem from past industry practice, poor corporate performers, and a lack of governance capacity and rule of law in developing countries, whether it's at the national, regional, and/or local level. Lack of governance and institutional capacity in terms of legislative or regulatory frameworks and the capacity to implement and enforce these can result in government responsibilities being relinquished to mining companies at the local level.

Recognition of these challenges has led to a number of important initiatives over the past decade or more, including the IFC performance standards and Global Reporting Initiative, the Voluntary Principles on Security and Human Rights, the Extractive Industries Transparency Initiative, the Kimberley Process Certification Scheme, and the UN Secretary General-mandated work of John Ruggie on human rights and the role of corporations, which is still under way.

Canada's mineral exploration and mining industries recognize that their ability to operate in Canada and abroad increasingly depends on the soundness of their environmental performance and social responsibility. Shareholders and investors are increasingly considering CSR performance in their valuation and investment decisions on Canadian mining firms.

Many companies and industry associations are being recognized for their work to improve performance in Canada and abroad. The Mining Association of Canada has developed a mandatory CSR program for its members called Towards Sustainable Mining, which was recently identified as "best in class" by Canadian Business for Social Responsibility.

The Prospectors and Developers Association of Canada developed a set of environmental guidelines, known as Environmental Excellence in Exploration, or e3, a number of years ago to support environmental performance improvement by the exploration industry. And last March PDAC released its e3Plus guidelines, which address CSR performance for mineral exploration firms.

[Translation]

The government not only encourages this approach to doing business, but sees an active role for itself in encouraging Canadian companies to develop and implement CSR practices that meet or beat international performance standards.

Natural Resources Canada has the mandate to promote and support the sustainable development of Canada's mineral, energy and forestry resources in order to contribute to the quality of life of Canadians.

We recognize that the standard for competitiveness today is not only measured by economic performance, but environmental and social responsibility performance as well.

In the area of corporate social responsibility, our activities are the following. We work closely with the Department of Foreign Affairs and International Trade in their comprehensive initiative to improve the CSR knowledge and capacity of their missions.

[English]

The Government of Canada has joined both the Extractive Industries Transparency Initiative and the Voluntary Principles on Security and Human Rights. NRCan sits on the board of the EITI. Canada works with developing countries through the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development. Established in 2005, it is a follow-up action led by Canada and South Africa to the 2002 World Summit on Sustainable Development.

The aim of the forum, which now includes over 43 countries, is to improve the contribution of mining to sustainable development through practical sharing of experiences and best practices. NRCan engages as well in regional multilateral government-to-government work to help build governance capacity for sustainable resource development. Canada, through NRCan, is the only non-African country to participate in the annual meetings of the African Mining Partnership and was instrumental in supporting a similar regional mechanism for the Americas.

We also implement programs through bilateral agreements with Chile and Brazil, as well as through bilateral cooperation with many developing countries, including Peru, Colombia, Ecuador, Mexico, Argentina, Panama, the Philippines, and many African countries. These countries are all seeking Canada's expertise related to building governance capacity to support the sustainable development of their mineral resources.

NRCan has also worked with industry, aboriginal organizations, and federal departments to develop an aboriginal tool kit for mining, which is increasingly being adopted and adapted by developing countries, including Peru, Mexico, the Philippines, Ecuador, and countries in west Africa.

[Translation]

In addition to National Resources Canada, a number of government departments and agencies already have in place a number of policies and guidelines to ensure that their clients are good corporate citizens.

[English]

Canada already expects that corporations working in Canada and Canadian cooperations working abroad adhere to the OECD guidelines for multinational enterprises that provide benchmarks for responsible business conduct.

DFAIT is home to Canada's national contact point, a senior-level official responsible for promoting awareness of the OECD guidelines and reviewing reports of specific instances of non-compliance with these guidelines. Export Development Canada also established a compliance officer in 2005 to enhance its transparency and accountability. In 2007, EDC also announced its support for Equator Principles, an international benchmark for assessing and managing social and environmental risk in project financing.

Finally, the Canadian Pension Plan Investment Board has a policy on responsible investing.

● (0910)

[Translation]

In addition to the measures noted above, the government has taken further substantive steps regarding the CSR performance of Canada's mining, oil and gas sectors operating abroad, including the National Roundtables on CSR.

[English]

On March 26, 2009, the government tabled its new CSR policy in Parliament entitled, *Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector*. The strategy is founded on four key pillars that together provide a multi-pronged, proactive, collaborative, policy-based approach.

The first pillar calls for continuing assistance from CIDA and NRCan for developing-country governments to enhance their capacity to manage natural resources in a sustainable and responsible manner. An example is the PERCAN project in Peru, now renewed to support capacity building in Peru's ministry of energy and mines.

The second pillar calls for the promotion of internationally recognized, voluntary CSR performance and reporting guidelines, including the International Finance Corporation's performance standards on social and environmental sustainability, the Voluntary Principles on Security and Human Rights, and the Global Reporting Initiative. This builds on Canada's adherence to the OECD guidelines for multinational enterprises.

The third pillar of the strategy involves support for the development of a new CSR centre of excellence. This is a one-stop shop, hosted by the Canadian Institute of Mining, Metallurgy and Petroleum, that will provide information to companies, non-governmental organizations, and other relevant stakeholders.

Finally, the fourth pillar of the strategy calls for the creation of a new office of the extractive sector CSR counsellor". As you are aware, the government recently appointed Dr. Marketa Evans as the first CSR counsellor.

By defining expectations, encouraging transparency in reporting, partnering on capacity building in developing countries and industry, and implementing a dispute resolution mechanism, the strategy will increase the ability of Canadian firms to manage social and environmental risks and encourage them to improve their performance in an ongoing manner. This will not only improve their CSR practices and sustainable development outcomes for developing countries; it also contributes to the competitiveness of Canadian industry working abroad.

In summary, improving the CSR performance of the Canadian extractive industry working abroad is a fundamentally important objective for the Government of Canada as well as for industry. In addition, the government recognizes the key objective of working collaboratively with host countries to improve their governance capacity for the sustainable development of their mineral and energy resources.

To address these objectives, the government, industry, and other stakeholders in Canada and internationally have implemented a number of specific initiatives over the past decade or longer. Complementing these efforts, and responding substantially to the report of the advisory group for the national round tables, the government is implementing a multi-pronged, proactive, collaborative strategy aimed at the continuous improvement of industry CSR performance and the strengthening of governance capacity through partnership in developing countries.

[*Translation*]

I thank you once again for having heard me here. It will be a pleasure to answer your questions.

[*English*]

**The Chair:** Thank you, Mr. Lucas.

We'll move into the first round of questioning, with Mr. Rae for seven minutes.

**Hon. Bob Rae (Toronto Centre, Lib.):** Mr. Lucas, thank you very much for your presentation.

With respect to Bill C-300, is it not possible to see that Bill C-300 could work in a very collaborative way—with some modest changes—with the government's current approach? In other words, we recognize what the government is doing and we see the progress that's been made, but would it not be possible to see Bill C-300 as working in parallel with what else is happening on the administrative level?

As an example, the development of the standards that is taking place at the international level would clearly give the government guidance with respect to the standards and guidelines that the legislation anticipates would be brought forward. In fact, there would be nothing dramatically different in what the guidelines are; it would simply be that if somebody has a complaint, there's a process by which the minister can then determine whether the complaint is frivolous or not.

It shouldn't be seen that Bill C-300 is in some sense antagonistic to the approach that's already being identified by the government. Or am I seeing the world through rose-coloured glasses, as my friends opposite might sometimes want to accuse me of doing?

• (0915)

**The Chair:** Thank you, Mr. Rae.

Mr. Lucas.

**Dr. Stephen Lucas:** Mr. Chair, in starting my response, I'd like to reiterate the fundamental objectives of the government in terms of implementing a multi-pronged strategy to improve the CSR performance of the Canadian extractive industry and as well to contribute to governance and institutional capacity building in host countries through collaborative government-to-government work. This multi-pronged strategy, building on the existing measures in place, including the OECD guidelines and national contact point, includes a number of mechanisms that, working together, provide a fulsome way forward on this. This includes a dispute resolution mechanism through the office of the CSR counsellor.

Implementing an additional and potentially complex and costly measure that is a legislative approach, when we have existing measures in place that are based on a policy framework with the objectives I've outlined, could contribute to confusion. There will be challenges in terms of how that would operate with other existing mechanisms, as I've outlined. There are already in place measures in, for example, Export Development Canada to ensure that companies it engages with in its business respond substantively to the guidance of the Equator Principles.

**The Chair:** I'm not sure you really answered his question. His question was specific to this bill and I think was driving at whether there is a way, through certain amendments or modifications, as Mr. Rae said, that we can still work with Bill C-300.

**Dr. Stephen Lucas:** As I've outlined, the government believes that through the CSR strategy it announced last spring, coupled with the measures in place and the commitment of industry and other stakeholders to work forward on this, there is a substantive mechanism in place that both proactively promotes good practice as a mechanism to resolve disputes and addresses one of the critical root issues, which is the lack of governance capacity in many developing countries for the sustainable development of their resources. As the strategy is committed to a five-year review and there will be an evidentiary base collected, not just through the OECD national contact point but through the work of the office of the CSR extractive counsellor, which will be transparent both in specific instances and in their annual report to Parliament, I believe it will give foundation for a fulsome response now and that with the review we'll have an opportunity in four and a half years' time to assess whether it is both necessary and sufficient to achieve the objectives I've outlined for the strategy.

**The Chair:** Okay.

Mr. Patry.

[*Translation*]

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

Thank you, Mr. Lucas and Ms. Flood.

Last October 2, the Minister of International Trade announced the appointment of Ms. Evans to the new position of corporate social responsibility advisor. In other countries that also do business in the mining, oil and gas sectors, for instance the United States, the United Kingdom, Germany, France and Brazil, is there a complaint and investigation system such as the one that has just been proposed by the government, and related sanctions as proposed by Bill C-300?

[*English*]

**The Chair:** Thank you, Mr. Patry.

**Dr. Stephen Lucas:** The Canadian CSR strategy that the government announced in the spring is unique in the world. Other countries as well as Canada have the national contact point as part of their implementation of the OECD guidelines for multinational enterprises. We've gone a significant step further in implementing the strategy, and in my discussions with both developed and developing countries around the world, they are highly complimentary to the approach the government has taken in this regard.

**The Chair:** You have some more time. You have another minute.

● (0920)

[*Translation*]

**Mr. Bernard Patry:** Mr. Lucas, in my opinion, Ms. Evans has no power. And what the government has proposed is an empty shell.

According to your experience, would Canadian mining and gas companies that do business abroad leave Canada because of a bill such as Bill C-300? That is my first question.

[*English*]

**Dr. Stephen Lucas:** I'd first like to respond to your initial statement regarding the role and responsibilities of the CSR counsellor. It is very important to look at it in the context of existing measures, such as a national contact point, the adoption by

EDC of the Equator Principles, and its compliance offer. It's another mechanism in place to support dispute resolution and it will work both proactively to increase awareness supporting the government's objective to see ongoing improvement for CSR performance and respond transparently to issues brought to it in regard to CSR concerns. It is one of a number of mechanisms. It does have clear responsibilities, and associated with the office is a commitment to transparent reporting on how issues brought to a CSR counsellor are addressed.

In regard to your second question on whether companies would leave, there are a couple of fundamental considerations here. First, investment capital is highly mobile. We believe that, in general, Canadian industries are committed to improving their performance, and their boards and shareholders are consistent with that; and that, in addition, adds further impetus to the overall thrust of the CSR strategy, that transparency and commitment.

In terms of whether companies would decide to leave, it's difficult for me to comment on that directly, but there is a potential challenge of an unlevel playing field with respect to other competitor nations.

**The Chair:** Mr. Patry, very quickly.

**Mr. Bernard Patry:** I have just a comment. I totally agree with you in the sense that if we're back with Bill C-300, this is because of the fact that the government didn't go ahead with the round tables, and in putting the round tables there was the creation of an ombudsman with some teeth. There are no teeth at all in what Madam Evans will do, and I don't think it is good for Canada.

That is my comment. I would agree with you.

[*Translation*]

**The Chair:** Thank you, Mr. Patry.

Ms. Deschamps, you have seven minutes.

**Ms. Johanne Deschamps (Laurentides—Labelle, BQ):** With your permission, I will be sharing my time with Ms. Lalonde

Good morning. A broad consultation was conducted over two years and a report was prepared. People were consulted from all walks of life—civil society, the mining industry and experts. The report recommends above all that non-compliers no longer be entitled to tax advantages, to loan guarantees or to other forms of government assistance.

On the matter of the government's accountability strategy, can you give us some examples of non-compliant companies? What is the government, or are the EDC people doing when they learn that a company is breaching the Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries where they are operating? For instance, in Peru, in 2004, some 40 cases of non-compliant companies were reported.

What is the reaction of Canadian government representatives in the face of these businesses that commit violations of human rights or environmental offences, for instance?

[English]

**The Chair:** Thank you, madame.

Mr. Lucas.

**Dr. Stephen Lucas:** Mr. Chair, in response to the question, in the first instance I just want to reiterate the point I made that the government's CSR strategy responds substantially to the recommendations of the round table report and builds on measures in place, including the adoption by EDC of the Equator Principles, which guide its business. As well, EDC has a CSR advisory group and a compliance officer, so a number of mechanisms are in place and then are augmented by the strategy, which responds to the plurality of the round table recommendations.

In regard to specific situations in other countries, in the first instance, should a company violate the laws of another land, the expectation would be that the country, through its mechanisms, would address that. In terms of the work of the mission, it would be to find out the nature of the situation and specifically work towards a resolution with the government of the country in question, the company, and others.

The existing national contact point, now coupled with the CSR counsellor, provides an opportunity to do fact-finding and transparent reporting on the nature of the situation and move it towards mediation and mechanisms that can provide a resolution.

• (0925)

**The Chair:** Madam Lalonde.

[Translation]

**Ms. Francine Lalonde:** If there is no agreement after the mediation, are you ready to impose the penalties? We would like the companies to understand that they can be more productive by respecting their employees' working conditions and lives. I saw such businesses in Africa.

However it is also possible that entrepreneurs do not understand that, or do not really seek ways of achieving it. In those conditions, should there not be adequate penalties in the law?

[English]

**Dr. Stephen Lucas:** I'd like to respond in several regards.

In the first instance, the government's CSR strategy and the policy foundation for it is a proactive approach of continuous improvement of industry performance, of measures to address disputes and undertake fact-finding and, as well, of fundamental improvement of the governance and institutional capacity of developing countries so they can implement and enforce the laws in their country to benefit from sustainable development of their resource wealth.

Consistent with my previous response, I'd note that the responsibility for taking action against companies that are breaking the laws or regulations of a country rests with that country itself. The dispute resolution process identified a mechanism in addition to the national contact point that will allow for further fact-finding. The transparent reporting of results, should a company be found to be in a situation where it isn't a good corporate performer, will have reputational impacts on that company. A very specific one is in the context of, again, EDC's adoption of the Equator Principles, which

would result in their review of any financing they have for that company.

I believe there are mechanisms both to encourage ongoing improvement and, as well, to identify and transparently respond to concerns that have been addressed, with measures such as those through EDC that will have the effect of sanctions against the company should they be found in a position of non-compliance with the laws of that country.

• (0930)

**The Chair:** Thank you, Mr. Lucas.

Mr. Goldring.

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

My thanks to you for appearing here today.

I believe we all agree that we want to support improved legislation and greater corporate responsibility internationally. I am concerned that we seem to be fixating on one industry. I would think that we would want to encourage this kind of corporate responsibility across the board—not only within the extractive sector, but also in forestry, manufacturing, and other Canadian industries dealing internationally.

I agree with my colleague opposite, Mr. Rae, who said that this bill speaks about these improvements. But as he also said, it requires some improvements, some modifications. Therein lies my concern. This suggests that there are problems with this bill—serious concerns on Mr. Rae's part and on our side as well. The difficulty lies in identifying what those concerns are.

I note from your comments that you weren't referring to this bill; you were talking in generalities. But don't the references in this bill to international standards and rights amount to a limit on Canadian sovereignty? The bill would seem to compel corporations to adhere to international standards and rights that the Canadian government itself might not have adopted. What does it do for Canadian sovereignty if our corporations are compelled to work under such a system? Might companies wish to leave this country to avoid the problematic points in this legislation?

**Dr. Stephen Lucas:** I'd like to respond to a number of points raised in the question.

First of all, the Government of Canada, in adhering to and promoting the OECD guidelines for multinational enterprises, does have an economy-wide approach and the national contact point, representing a mechanism to both promote and address complaints associated with implementation of those guidelines by Canadian firms working in Canada, as well as Canadian corporations working abroad.

Secondly, as noted in my opening remarks, increasingly business—and in particular, businesses in the mining and oil and gas sectors working in Canada and abroad—recognize that their competitiveness in terms of access to resources and the ability to earn their legal and social licence to raise funds and be supported by shareholders requires not only economic performance but environmental and social responsibility performance against those international standards outlined by the IFC, as well as the specific laws of any country in which they operate.

In regard to your question on specific challenges in the bill, I return to the point I made that a number of carefully considered mechanisms are in place now that have arisen over the past number of years, as I noted, including the OECD guidelines and national contact point, work by industry, and then the four pillars of the government strategy, which we believe together provide a fulsome response to addressing the twin objectives of improving CSR performance, addressing challenges as they arise, and improving the governance capacity of host countries working in partnership with those governments.

The addition of a legislative approach such as envisaged in Bill C-300 would add a different dimension that we believe is inconsistent with the policy-based proactive approach to addressing those objectives, as I noted in the CSR strategy, which builds on a number of mechanisms already in place. So it's that concern that this mechanism and the complexity and cost associated with it will create the potential for confusion and duplication and not allow the collaborative, proactive approach of the strategy to move forward. It'll be really driven by meeting the minimum rules envisaged in that, as opposed to reaching for the bar of improved performance and addressing the root issue of the governance capacity challenges in developing countries.

One of the areas that the bill notes is in regard to respecting human rights and the role of corporations. Currently state conventions on human rights link the responsibility or outline the relationship between individuals and the state. The work of John Ruggie, which is still under way, mandated by the UN Secretary General, is looking at the issue of the role of corporations, but that work is not as yet complete. I think it would be very challenging for Canada to step into that area before that work is complete and addressed in a multilateral UN process that it originated from.

• (0935)

**Mr. Peter Goldring:** So you would agree, then, on the mention in here of human rights...and not to go through what this would mean internationally, because I'm sure there are maybe dozens of different examples of United Nations agreements or international agreements and regional agreements that have been drawn up and drafted that Canada may not even have been requested to be a signatory to. It might have been done in another region of the world or whatever, but the way this bill is written, it would subscribe the Canadian corporations to adhere to standards that Canada might not even have been asked itself to subscribe to, or Canada might have been part of the drafting or part of the voting of agreements but would not agree to them. So it would compel these corporations to adhere to international agreements that Canada is not part of.

Does that not pose a huge complication?

**The Chair:** Very quickly, please, because our time has just eroded.

**Dr. Stephen Lucas:** As I noted, the government strategy identifies the Voluntary Principles on Security and Human Rights as one of the performance standards for industry to follow. Canada has applied to join and has joined those. The Equator Principles, which guide the investment risk analysis and decisions of EDC, consider that as well.

As I noted, the international human rights conventions, and their applications and states, fundamentally are between the state and individuals. Recognizing the challenge around the role of corporations, the UN Secretary General mandated work to John Ruggie, who has provided an initial report, but that work is not complete as yet.

I would just note that we've ratified almost all UN human rights treaties and we'd be happy to ask our colleagues at the Department of Foreign Affairs and International Trade to provide a more fulsome written response to the question.

**The Chair:** Thank you, Mr. Lucas. You can have that submitted at any time.

Mr. Dewar.

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

Thank you to our guests.

I note that I think you just said no to Mr. Goldring.

When I look at the proposal we have in front of us, and we look at what the government is doing—and I appreciate the fact you're a public servant, so your job is to carry through with what your political masters ask of you—I'm not going to ask your opinion, but I want a status report of the process we have in front of us, as you outlined it.

And I have to say—I can give an opinion, so I will—that the process of the round table, and what we were hoping for and people were waiting patiently to see, was to have an ombudsperson put into a position where they would be able to hear complaints and to arbitrate where to go. I think the spirit of this—and a private member's bill has limitations, you can only go so far—doesn't do that. But I think Mr. Rae was going in the direction, which was a little different from what Mr. Goldring was maybe suggesting Mr. Rae was going, in which we could use what the government has put in place with Bill C-300 and move things along—evolve.

I wanted to clarify with you, and for people who are listening and going to read the blues on this, that Bill C-300 does provide a mechanism so concerns can be heard and a process put in place to deal with them. Can you explain to me right now the proposal the government has put forward? If one party doesn't want to involve itself in the process, can the process go ahead? In other words, is it incumbent upon both parties to take part in this dispute resolution process?

• (0940)

**Dr. Stephen Lucas:** I'll answer your specific question first, and then respond more generally to some of the other points you raised.



Indeed, the definition of the role and responsibilities of the extractive sector counsellor—proceeding with the process outlined from assessment to informal mediation, fact-finding, access to formal mediation, and reporting—does require the consent of the complainant and the organization or individual complained about.

**Mr. Paul Dewar:** I don't mean to interrupt, but just to be clear here so people know, the process that's set up right now.... If, let's say, a group comes forward with concerns about a company, puts it forward, and the company decides it doesn't want to take part in the process, then the process stops right there. Is that correct?

**Dr. Stephen Lucas:** Correct. I guess the two things I would note are that that would be reported, because of the commitment to transparent reporting, and then second, I think the great majority of companies would want to participate because of the transparency.

**Mr. Paul Dewar:** Of course, I'm just saying the process is such that they don't have to, and if they don't, it doesn't go forward.

**Dr. Stephen Lucas:** No, but there is transparent reporting and the fact that a complaint was made and that it wasn't addressed....

And again, more fundamentally, with regard to the round table report, the responsibilities of the CSR extractive counsellor are substantively similar to those envisaged for the ombudsman. There was an additional process of a tripartite review committee, which wasn't included in the government strategy.

I think, as I had noted, keeping in mind the objectives I've outlined—continuous improving performance and addressing ways to strengthen the governance capacity of developing countries—that the opportunity, building on the information already collected by the OECD national contact point, to document and have a body of evidence obtained through the dispute resolution mechanism and work of the extractive sector counsellor will provide the basis for a substantive consideration at the time of review, four and a half years hence, as to whether this is a necessary and sufficient mechanism to address challenges.

**Mr. Paul Dewar:** Yes, I know. I've read it, and I appreciate your helping us with that.

I want to put some things in context. You're aware of other jurisdictions that have taken other initiatives to deal with the extractive industries and CSR. Norway has, through its pension plan, withdrawn its investments in a Canadian extractive industry because of its concerns. I'm sure you are aware of that instance.

Right now going through Congress is a bill that is looking at tagging coltan in the Congo. Would it be fair to say that Canada isn't alone in wanting to engage with initiatives on corporate social responsibility?

**Dr. Stephen Lucas:** I'd agree that over the past decade this has been an area of interest for multilateral groups, the World Bank, and other countries as well as Canada.

**Mr. Paul Dewar:** And we've been leaders. I recall that the Kimberley Process wasn't embraced by everyone when it was first put out there. Is that correct?

**Dr. Stephen Lucas:** It resulted from an international multi-stakeholder process. In the context of that situation, it was the right thing—

**Mr. Paul Dewar:** And people were able to adapt.

**Dr. Stephen Lucas:**—and Canada supported it. But in regard to your comment about Norway and their pension plan, the Canadian Pension Plan Investment Board has a policy on responsible investing. EDC has adopted—

**Mr. Paul Dewar:** I acknowledge that.

• (0945)

**Dr. Stephen Lucas:**—the Equator Principles.

**Mr. Paul Dewar:** Has the EDC ever withdrawn support from an existing partner on that basis?

**Dr. Stephen Lucas:** I'm not able to respond to that, but we could follow up with EDC and get an answer for you.

**Mr. Paul Dewar:** Thank you.

**The Chair:** Does anyone else have a question?

I would like to suggest that we recess a little early. On our next panel, we have three different groups. Even though we spoke about waiting for committee business till Thursday, there is one issue that I think we need to discuss, either that or call a steering committee meeting. So I'd like to leave about five minutes at the end for some committee business.

Mr. Lunney.

**Mr. James Lunney (Nanaimo—Alberni, CPC):** Thank you for a clear presentation on Canada's comprehensive approach. In your opening remarks, you mentioned that, according to Stats Can, Canada has over a thousand mining and exploration companies in 100 countries, encompassing about 5,000 projects. You are Natural Resources, our point people on this. Could you give us an idea of how Canada stacks up in relation to other countries? The United States is 10 times larger than Canada. Are we number two in the world? Are we number six? I am referring to mining capacity and the number of countries participating in international extraction efforts.

**Dr. Stephen Lucas:** Canada is, on many measures, number one. We have well over 50% of the global exploration and mining companies. About a third of the global capital for exploration and mining investment is raised on the Toronto Venture Exchange and the Toronto Stock Exchange. Next in the size and reach of its mining sector is Australia, and it's concentrated in several large corporations.

**Mr. James Lunney:** I have a follow-up to Mr. Goldring's question about paragraph 5(2)(c), a part of Bill C-300 that calls on ministers to issue guidelines to ensure that corporations operate in a manner consistent with international human rights standards.

Mr. Goldring raised this point with you. That's a developing issue, international human rights standards. There are all kinds of things out there, some of which many nations, including Canada, do not fully endorse. Was it clear that you were to get back to us on this issue, with respect to whether it would be problematic?

**Dr. Stephen Lucas:** Those conventions and their implementation within various countries or states articulate the relationship and responsibilities of individuals with respect to that country or state, and so aren't intended for corporations. This is an area of active work. The UN Secretary General mandated that work to John Ruggie, and he has produced an initial report. There's further work going on. What does exist—and it is part of the government strategy—is the Voluntary Principles on Security and Human Rights, together with the Equator Principles, which EDC has adopted.

**The Chair:** Thank you, Mr. Lucas.

**Dr. Stephen Lucas:** We will follow up more fulsomely with a response from DFAIT.

**The Chair:** Mr. Pearson has a quick question.

**Mr. Glen Pearson (London North Centre, Lib.):** I'm still trying to get my head around the ombudsman. These round tables were serious work, with a lot of people from the industry as well in on them. One of the things they coalesced around in the end was an ombudsman with enforcement capabilities.

I'm just trying to understand why, since the industry agreed with that, the government would come in with a position that is beneath that. It would seem to me that industry wanted something that was higher, at least as a result of the round tables. I wonder why we're not striking higher.

**Dr. Stephen Lucas:** In response, Mr. Chair, what the round tables recommended was a broader policy-based approach, to which the government has responded substantively. The ombudsman function was essentially a fact-finding function that had mediative powers in many regards, very similar to what the government has implemented through the CSR counsellor.

There was an additional support recommended through the round table report in that process, through a tripartite advisory committee, but it would not itself have sanctioning power; it would provide recommendations to the government. We believe, again through the fact-finding and mediative work of the CSR counsellor and their commitment both in specific instances of each complaint received and in their annual reporting, that transparency in the information provided to the Minister of International Trade will substantively respond to many of the considerations identified in that round table report in regard to that area of dispute resolution.

• (0950)

**Mr. Glen Pearson:** Thank you, Mr. Chair.

**The Chair:** Thank you, Mr. Pearson.

Just very quickly, again, a quick comment.

**Mr. Bernard Patry:** Following the question of my colleague Mr. Pearson about the new *poste de conseiller*, what were you doing before when you received a complaint coming from a group in any country, say in Central America? What were you doing with this? Nothing? Were you responding? Were you fact-finding? What were you doing?

**Dr. Stephen Lucas:** I'd note several things, Mr. Chair.

The government has had in existence a national contact point for the OECD guidelines, so that's an existing mechanism that has been used. In addition, as issues arise, the mission in that country is often

involved in support with the host government, the company, and other parties in establishing the facts. It can lead in many cases, through early identification of issues, to proactive and positive approaches.

I think what the CSR counsellor will do as part of, again, this multi-faceted strategy is create a more formalized mechanism for those complaints to come in, and that complements existing or prior missions along with the national contact point and mechanisms that EDC and the pension plan have in place.

**The Chair:** Thank you.

I think Madame Deschamps has a question. Do you have a very quick question?

[*Translation*]

**Ms. Johanne Deschamps:** I would like to continue in the same vein as Mr. Patry.

You know that the majority of corporations have facilities in Latin America and Africa. Most of the reported cases of human rights breaches, forced population transfers and environmental catastrophes occur in those countries. It might also be said amongst ourselves that most of these states cannot manage their own resources.

Concretely, what can be done when you are told of cases of blatant violations on the part of mining companies in those countries? I am referring to the Great Lakes Region of Africa, Peru, Mexico and Colombia; a multitude of cases were reported to us. You talked about measures and strategies. Can the government take concrete action against these delinquent companies?

[*English*]

**The Chair:** Thank you, madame.

Mr. Lucas.

**Dr. Stephen Lucas:** Mr. Chair, I would like to reiterate some of the points I've made. A first key step and a fundamental role of the CSR counsellor will be establishing facts, undertaking fact-finding. In addition, the mission on the ground can work with the host government, which has the legal frameworks to address violations of their codes and standards, and look for ways to proactively address concerns.

We also—and in particular in my role—are very regularly approached by many of the governments of these countries in terms of working positively and proactively to build their governance capacity. They have the sovereign right as states to design, implement, and enforce their laws and regulations. I've routinely worked with Colombia. Last week I had a delegation in from Ecuador that is looking to do that. They've had challenges and they have turned to the Government of Canada for expertise to address those. We've looked at sharing practices and experience from Canadian aboriginal communities with their indigenous commu-

So there are a number of facets and approaches that can be taken to proactively avoid and prevent challenges from arising—in particular, in a host country, capacity building and increasing awareness and uptake with CSR, performance expectations that the government has outlined of our corporations working abroad. And then through the national contact point, CSR counsellor, the work of the missions abroad, EDC, and the pension plan, there are measures for finding out what exactly is happening and seeking to mediate or resolve those and taking measures, including EDC through its compliance officer and adoption of alternate principles, that would have implications for the corporation in question.

• (0955)

**The Chair:** Thank you, Mr. Lucas. We are going to suspend now. We very much appreciate your coming and bringing your perspective on Bill C-300.

We'll suspend, and then we'll call our other guests to make their way to the table.

• \_\_\_\_\_ (Pause) \_\_\_\_\_  
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**The Chair:** In the second half of our meeting today, we're going to continue our committee's business study of Bill C-300. Today we are going to hear from Rights and Democracy: Rémy Beaugard, the president of Rights and Democracy, and Carol Samdup, senior adviser, economic and social rights. Also, we'll hear from OTD Exploration Services: we have William McGuinty, the president of that group. And from Harvard Law School, we have Tyler Giannini, lecturer on law, International Human Rights Clinic.

Most of you sat through the opening hour and you probably understand how we proceed in this committee. We look forward to your comments, and then we'll proceed into the first round of questioning.

If we do have five minutes at the end, basically to talk about direction on the treatment of Canadians abroad, that is what we need a theme on in order to invite guests on that theme. At that point maybe we could get a few ideas from the committee.

I'll open the floor to Mr. Beaugard, please.

• (1000)

[*Translation*]

**Mr. Rémy M. Beaugard (President, Rights & Democracy):** Thank you very much, Mr. Chairman.

I wish to introduce to you my colleague Carole Samdup who is the program officer responsible for this file at Rights and Democracy.

[*English*]

I would like to begin by thanking the chair, Mr. Sorenson, as well as the committee members for their attention to the issue of corporate accountability and for inviting us today.

As you know, we were created by an act of Parliament back in 1988 to promote and defend human rights and democratic development internationally. For more than 20 years, we've been implementing this mandate on behalf of Canadians and have reported to them through Parliament. We will have an opportunity,

about two weeks from now, to appear in front of you to discuss our five-year review.

We promote and defend human rights and democratic freedoms around the world. We support individuals, communities, and democracy activists. And we assist in the building of democratic institutions and processes that give effect to universal human rights.

[*Translation*]

One of the greatest economic challenges in the 21<sup>st</sup> century consists in seeing to it that the increased movements of international investments and the activity of large corporations not stand in the way of our commitment to respecting human rights. This is not a rhetorical issue. It affects millions of people throughout the world. The arrival of a foreign business in a community can be a good thing for the population but it can also be a very bad piece of news.

Sometimes the project incorporates all of the components of a complex spectrum that goes from sustainable development to the respect of human rights. In those specific cases, local populations can derive a great deal from such an experience, and the investment then becomes a positive for their development. In other cases, things take a less fortunate turn. When projects are developed in countries where human rights are not always taken into account, investments may be made to the detriment of the host populations. Numerous cases of violations have indeed been reported and documented in several developing countries.

Moreover for a number of years the practices of businesses that breach human rights standards have been exposed by the media. In certain cases, the companies concerned were directly involved in breaching fundamental rights, for example by working conditions that run counter to the standards of the International Labour Organization, or by forcibly moving populations. In other cases, they became the accomplices of a system set up by authoritarian states by resorting to the use of government security forces to repress any opposition.

That is, in a nutshell, the debate behind the bill that is before you. How do we see to it that foreign investment by Canadian companies make a positive contribution to the host populations? How do we ensure the accountability of those businesses when international human rights laws are not respected? How do we ensure that the people and communities concerned have access to measures of redress when their rights are violated?

Since 1994, Rights and Democracy has been actively involved in various projects concerning corporate social responsibility as well as the impact of foreign trade and investments on human rights. As a member of the advisory group, we took part in the National Roundtables on Corporate Social Responsibility and Canadian Extractive Industry in Developing Countries.

In 2005, in cooperation with several civil society organizations in five countries, we assessed the impact of foreign investment projects. In doing these studies, we realized that the communities affected by these projects were often poorly equipped to make representations to the state, negotiate with the businesses, participate in decision-making and influence it, or even understand the national and international redress mechanisms at their disposal.

On the basis of those observations, we have developed a methodology that the communities now use, from Cameroun to Ecuador, to advocate for their rights in the face of foreign investment. More than ever, we have to see to it that the increased movement of international investments and of the activity of large corporations not stand in the way of our commitment and obligations.

● (1005)

[English]

As you debate Bill C-300 and the issue of corporate accountability more broadly, we hope to provide you with some of the principles we have come to view as essential for effective corporate responsibility over the last decade and a half. These principles can be divided into three categories, which John Ruggie, the UN Secretary-General's special representative on business and human rights, applies. They are called "protect", "respect", and "remedy".

The first principle deals with the state duty to protect against human rights abuse by third parties, including business.

In our experience, developing countries have often ratified key international human rights treaties, but are either incapable or unwilling to fully implement them. This is particularly true for less developed countries or countries in conflict or under the control of dictators. Businesses operating in this environment are susceptible to being complicit in human rights violations or, more often than not, benefiting from violations committed by state authorities. In these situations, in which the host state is weak or corrupt, foreign companies and their home states bear an added responsibility to avoid infringing on the rights of others.

The Government of Canada and Canadians can and do contribute to building capacity in developing countries, and they encourage the implementation of human rights obligations, but this is not a substitute for ensuring our own actions abroad to not contravene human rights laws.

The second principle deals with the responsibility of business to respect human rights. This means that companies must take every precaution to avoid committing human rights violations or benefiting from them. In our experience, most companies are law-abiding and respect human rights, but some companies are in fact responsible for human rights violations. We cannot hide this fact. For these companies in the minority, regulations are needed based on human rights; voluntary measures are often not enough. They have some usefulness as a statement of intent, but they are not sufficient.

As John Ruggie recently stated:

A pure model of self-regulation beyond compliance with national laws lacks prima facie credibility. We live in a world of 192 nations, 80,000 multinational corporations, millions of affiliates and suppliers, and countless other firms, large and small. There is not enough magic in any marketplace, real or imaginary, to overcome the staggering collective action problems.

Human rights provide the framework of international standards that have been negotiated and adopted by states. As such, they serve as an international consensus. In addition, human rights norms are also directly binding on non-state actors. Human rights offer a well-established governance and monitoring framework through the various activities and procedures of the UN human rights system. Human rights provide a set of procedural principles that serve as a due diligence checklist for companies when evaluating potential future projects. These include non-discrimination, transparency, participation, and accountability.

Importantly, human rights do not impose any new standards or commitments other than those that are stated and agreed to already. It should not, therefore, be difficult for countries like Canada to build a regulatory framework based on human rights principles, nor prohibitive for companies to adhere to them.

Finally, the third principle deals with the need for greater access by victims to effective remedies. Those most affected by foreign investment projects are rarely, if ever, consulted. When things go bad and their rights are violated, they have no recourse to obtain justice.

Victims must be able to submit a claim to an adjudicating body when their rights are violated, and they must be able to do so without fear of persecution or reprisal. Complaint mechanisms or fair and impartial judicial processes are non-existent in many developing countries, but this must not be a licence for a company to operate in this vacuum and escape responsibility.

In this respect, the Government of Canada can play an important role. Our government has a shared responsibility under international human rights law to ensure that human rights are protected, even outside its own territory. Once Canada allocates public funds to an investment project, it has responsibility for its impact, no matter where the impact is experienced. Canada has a moral obligation to ensure its funds are not used in a manner that would be illegal in domestic law as a violation of human rights.

● (1010)

By instituting an enforcement mechanism with a mandate to investigate claims and make binding decisions, and to which victims can seek remedy for violations committed by Canadian companies overseas, Parliament would be taking an important step toward fulfilling the promise of corporate social responsibility. Consulting local communities before undertaking foreign investment projects and ensuring that the human rights risks are mitigated would be far more effective and beneficial to all actors. In order to level the playing field, an effective enforcement mechanism is required.

These three principles should guide your deliberations on legislation to ensure that Canada's actions abroad favour rather than hinder universal human rights.

Thank you.

**The Chair:** Thank you, Mr. Beaugard.

Next we'll move to Mr. McGuinty from OTD Exploration Services.

Welcome.

**Mr. William McGuinty (President, OTD Exploration Services Inc.):** Thank you, Mr. Chair and members of the committee, for sharing your time with me today.

I come as an individual to present my concerns regarding the effects of Bill C-300. OTD is a family business. My wife and I have been working in the mineral sector for the last 20-plus years and have experience in the management and support of Canadian junior exploration companies working as corporate enterprises in Canada, and effective exploration operators in Canada and offshore.

As the Department of Foreign Affairs and International Trade points out on their website, there are about 7,000 to 8,000 mineral exploration projects in the hands of Canadian explorers in over 100 countries. This represents a large globally distributed number of communities where at least one Canadian plays a role in local development. The images from many of these places are striking, whether they appear on an exploration company's website or one belonging to an aid agency or to a civil society. They span the same range of natural environments, from pristine to overstressed, and they span that same range of human conditions. These are places where we would hope the mineral sector, civil society, and the Canadian government would consider mineral development to be part of the solution to improvement in the conditions of a host community and a host nation. They are also places where no other Canadian economic investment or development leadership may be available. They are also places where perhaps no other international or domestic leadership exists.

You might ask why I'm concerned if I work for junior capital exploration companies. Junior companies do not in general avail themselves of the financial mechanisms that are at risk of sanction from the minister. As an exploration geologist, I could work most of my career in mineral development and never see a project that would have to consider the financial facilities that Bill C-300 proposals to withhold. I am concerned because many of the examples being used in public positions taken on Bill C-300 are situations where junior exploration companies are identified at various exploration stages.

Bill C-300 doesn't outline a link between the minister's review of a claim and a candidacy for financial support. Any allegation can be submitted, regardless of the project's potential fiscal relationship to the Canadian government. The sanctions on a bad actor at the production stage are clear enough under Bill C-300. They will come at the end of what will be a long and difficult investigation and a decision by the minister. It also happens at the end of a longer process of development at the mine project. The company has a large historic investment and future measured benefits to defend, as well as its reputation.

A sanction may interfere with a host nation's plans or its development opportunity. It may force the company to abandon its intentions. However, a sanction at this point still will leave a project that someone may develop in the future, within the life of the affected community or that of a future generation.

The effect of what amounts to non-monetary sanctions on exploration projects will be more immediate. In many cases, due process might never reach the planned end in the *Gazette*. I used the word "project" and not "company" specifically here because the junior exploration company is usually shorter-lived than the project. The company may move on or possibly dissolve. It has component technical, financial, and administrative pieces that will come apart and eventually recombine somewhere else in the sector. This would not be out of the ordinary. It's a function of exploration and of financing exploration. Bill C-300 just provides another catalyst for it to happen. It kind of adds a 300-pound gorilla into the mix. The junior company may not survive the time of the minister's investigation, regardless of the merit of the claim against it. It may decide the dispute is not worth the time and effort, or that the defence will cost more than the current exploration value of the project. Perhaps that is the desired outcome of a claim in the first place.

Regardless, there is still a mineral project there. The minister's decision will be a beginning, and not an end, to a larger Canadian involvement in human rights claims in the resource sector. If Canada has decided that Canada should prevent an activity by a Canadian company or remove it from contention to operate a project, Canada must understand that by doing so it has an obligation to ensure that the situation we leave does less harm than the one we acted against. By taking action against a company, Canada will have picked up the reins of responsibility, and we must see that those we seek to protect are no worse off for our intervention.

The debris left behind after a minister's decision, either supporting or dismissing a claim, will remain with the project, that point on the planet where the company, two nations, civil society, and all those in the host community who took stands and fought for their interests and rights played out. It is hard to imagine that upon resolution the host community will feel the same closure as the minister may in his or her annual report. They may feel further abused by the externality of the process, especially if the adjudicator offers no suggestions or solutions to improve the company's position over its previous situation. If Bill C-300 were about justice, it would contain mechanisms to ensure this.

●(1015)

What would Canada offer to a host community to replace the lost opportunity and guide them to a better outcome once the fight is over?

Claims against Canadian exploration companies and projects at the early stage of enterprise will be numerous, hard to investigate, and often rooted in all-too-human frailties such as greed, ambition, and plain old politics. It is not presumptuous to say that 5% of 7,000 projects have a local complaint that could make its way to the minister. That would be a new briefing note for the minister every day, a new investigation beginning every day.

From my own experience, mining operations, especially those represented by a foreign actor, can attract suspicion and hostility on principle. Companies I have led through exploration projects have been accused of dumping cyanide in a river and exploring with helicopters at night to avoid protesters in El Salvador, stealing gold and damaging water tables in Argentina, and corrupting officials pretty much everywhere. All of these are untrue. I was not undertaking any work where my level of activity matched the accusation, even in theory. Despite the lack of any factual supporting evidence, these accusations appeared on the Internet, linked by Canadian and American sponsors who made no attempt to verify the claims or even speak to me before assisting in the dissemination of the accusations, nor have they since.

This is what the entry point can look like for the minister when a claim is made, if it has merit or it doesn't.

My personal favourite was being accused by the wives of my employees in Madagascar of making 70 of their men impotent. I will admit there was a lack of cultural acumen on my part. I was able to resolve it, but I'm sure it would have made a great sound bite on one of the CBC Radio morning shows.

I've tried to describe what I think are challenges for Canada in the decisions about Canadian exploration companies and host communities under Bill C-300. I'm going to try to be slightly cynical here for a moment.

In my weaker moments, I don't think Bill C-300 is about extractives at all. I think it's about challenging the Government of Canada's policies and actions on the international stage. This is about any member of society from anywhere attacking what they feel is a want in Canada's moral policy. This is about driving the interpretation of subclause 5(2), which was talked about earlier, about what is "consistent with international human rights standards" to where someone thinks Canada should be going. This could be about a weak foreign government sponsoring the removal of a Canadian company to replace it with one of its own, or one from another country with better state-to-state incentives.

In a weaker moment, I would ask the Canadian government if they were satisfied with the results of the previous ouster of Talisman in the case of the Somalis who were involved and what the minister's action would have looked like had Bill C-300 existed then.

Bill C-300 will make Canada liable for the results of the vacuum created by the exercise of our enlightened human rights determinations, while at the same time removing its best available tool, a fully engaged extractive company. Although designed to create another layer of accountability in Canadian actions abroad, this bill neither practically nor effectively accomplishes that, nor does it offer to define mechanisms for assuring justice for host communities.

In closing, members of the committee, I would refer you to the tools that my colleagues in the extractive sector will present to you during these hearings: the Prospectors and Developers Association's e3Plus, the Mining Association's Towards Sustainable Mining, and the Equator Principles. It is my impression that the extractive sector as a whole, including my piece of it, is coming to embrace their operational aspects and, more particularly, the motivations that created them in the first place. In fact, it was the operational aspects that were lacking. I participated in the development of e3Plus, and the shared concern for its design was that it place good operational tools in the hands of field personnel working with our host communities.

Now, e3Plus was designed during the time the industry and civil society waited for the government's CSR position paper, *Building the Canadian Advantage*, and for its policy, which is now on the DFAIT website. They're both in place. They're both still evolving. Being new initiatives, both are largely untested as bodies of practice or mechanisms to improve CSR. However, they're both aimed at improving performance of Canadian extractives in all aspects of their activities, including human rights. They will persist in doing so, while at the end of the day Bill C-300 will obstruct Canada's and the extractive sector's efforts to successfully resolve societal issues and mediate disputes in communities where they originate. It will do so in places where host communities will need it the most.

Thank you.

● (1020)

**The Chair:** Thank you very much, Mr. McGuinty.

Finally, we're pleased to have Tyler Giannini, who is visiting from Harvard; and Sarah Knuckey, from New York University's Center for Human Rights and Global Justice, who is visiting us as well today.

We welcome you, and I apologize for not introducing you earlier. You are going to share your time.

**Mr. Tyler Giannini (Lecturer on Law, International Human Rights Clinic, Harvard Law School):** Thank you very much, Mr. Chairman and committee members, for giving us the opportunity to speak before you today. My name is Tyler Giannini, and I head the International Human Rights Clinic at Harvard Law School. I'm joined today by Ms. Sarah Knuckey of the Center for Human Rights and Global Justice at the New York University School of Law.

Before I begin, I wish to state my understanding that my presentation and my statements to this committee are covered by the parliamentary privilege, and to the extent I need to assert such privilege, I hereby do.

Ms. Knuckey and I are human rights lawyers with some two decades of combined experience documenting human rights violations. Since 2006 Ms. Knuckey has traveled to Papua New Guinea, or PNG, three times, and I twice, to investigate personally the impact of the Porgera Joint Venture, or PJV, mine, majority-owned and operated by Canadian mining interests since its inception.

Today we speak about security and human rights at the PJV mine and discuss why Bill C-300 is particularly important when independent investigations have failed to materialize despite consistent allegations of abuse. First, I will illustrate how Bill C-300 gives the Canadian government a critical role in promoting accountability by offering a venue for victim complaints when other actors fail to do so. This is especially true when host countries like PNG and corporations may have an inherent conflict of interest that inhibits the likelihood of independent investigations from taking place.

Secondly, Ms. Knuckey will discuss the serious allegations of violence that have persisted during the life of this mine in light of the failure to investigate the abuses adequately. The PJV mine began operations in the 1990s in a remote area of PNG, pursuant to an agreement between the PNG government and Placer Dome, a Canadian corporation. In 2006 Barrick Gold purchased Placer Dome and acquired the mine.

Dating to the 1990s, there have been reports of serious human rights abuses associated with the mine. Individuals we have spoken with have detailed allegations of the following grave abuses: rapes, including gang rapes; physical assault; and killings. The PNG government and the PJV mine have responsibilities to investigate such allegations; however, based on interviews and documents obtained in PNG, independent investigations by these parties appear unlikely.

First, according to many witnesses and victims, local police have repeatedly failed to investigate adequately allegations of abuse by PJV personnel. Police officers have also indicated that their investigative efforts have been hampered by PJV security officers who have restricted immediate access to crime scenes within the mine and, in their view, may have tampered with evidence.

In 2005, in the wake of local pressure and company acknowledgement of mine-related deaths, the PNG government created a committee to investigate the situation. However, despite completing its work in 2006, the committee report has not yet been released.

Secondly, we have concerns about the independent investigations because mine security forces are comprised largely of police reservists. Many of the abuses alleged to have been committed by mine security forces are attributed to these police.

During our March 2009 fact-finding trip to the country, we were able to view and transcribe a memorandum of understanding between the mine and the police force, which we have included in its entirety for the record. This document, which was shown to members of the Harvard team by a senior police official in PNG, authorized “the deployment of an agreed number of Reserve Police (who are employees of the PJV)”. The MOU also specifies that the mine is responsible for “all costs and expenses associated with the

Reserve Police, made up of authorized PJV employees, including remuneration, training and the provisions of uniforms and equipment”.

● (1025)

Law enforcement offices we spoke with also indicated that the police reservists comprise the majority of the mine's armed security officers and take day-to-day orders from mine officials.

We were further told that the weapons and equipment used by the reservists—the weapons and equipment that may have been used to commit the alleged abuses—are purchased by the mine. On its face, the MOU raises significant conflict of interest concerns.

As it stands now, given that, one, the PNG government's failure to act or even make public its government committee report on deaths related to the mine; two, the existence of the MOU, which creates inherent conflicts of interest; and three, the consistent inaction on the ground, there is little possibility of a comprehensive, independent, and fair investigation of alleged abuses by the actors in PNG. In such a situation there's a clear need for an external party to conduct an independent review. That's exactly what Bill C-300 does. It establishes a mechanism that makes such an external review possible.

With what, I now turn this over to Ms. Knuckey, who will detail the gravity of the allegations and further demonstrate the need for a bill like Bill C-300.

**The Chair:** Thank you.

Ms. Knuckey, you have about two and a half minutes. I'll try to give you a little extra, but as quickly as possible, please.

**Ms. Sarah Knuckey (Lawyer, Center for Human Rights and Global Justice, New York University School of Law):** Mr. Chairperson and committee members, like Mr. Giannini, I avail myself of the parliamentary privilege.

Mr. Chairperson, we have documented allegations of grave human rights abuses—killings, rapes, beatings—by security personnel employed by Canadian companies. The seriousness of these alleged abuses and the absence to date of accountability point clearly to the need for a bill like Bill C-300, which would create an independent mechanism to receive and examine complaints by victims.

In the course of our work, we have interviewed more than 250 individuals, including alleged victims, witnesses, family members of alleged victims, local residents, local and international civil society, health officials, government officials, police, mine staff, and current and former PJV security guards. We have also reviewed medical and police records.

In Porgera, poverty drives locals to trespass on what is now mine property. Certainly, some of the cases of use of force by PJV's guards have likely been justified, either in the defence of property or of life. However, I would like to share with you today accounts of rapes we have documented that have been especially brutal and that are, of course, without any possible justification.

Numerous accounts of rapes show a similar pattern. The guards, usually in a group of five or more, find a woman while they are patrolling on or near mine property. They take turns threatening, beating, and raping her. In a number of cases, women reported to me being forced to chew and swallow the condoms used by guards during the rape.

Most of the women told me that they did not report the rapes for fear of retribution. Those who had stated that the police took no action. If a woman's family finds out about the abuse, she is often further shunned. In no cases were the women aware of any investigation, prosecution, or punishment of the alleged perpetrators.

I would like to highlight for the committee one particular incident that a 25-year-old woman reported to me in March this year. Her account went as follows.

She resided just a few minutes' walk from the mine and often went there to look for gold. She used the money she made from selling it to buy basic necessities, such as clothing and food, for members of her family. In 2008, five PJV security guards caught her while she was on mine property. She told me that the guards asked her if she wanted to go home or if she wanted to be sent to jail. When she replied that she wanted to go home, they said that they would rape her first.

She explained to me that she tried to run, but that they held her, tore off her shorts, tore off her shirt and her underwear, and threw her down on the rocks. She said that each of the five took turns raping her while the others guarded the road. They pointed their guns at her and threatened to shoot if she tried to escape. They beat her legs and hit her with stones. They held her head down with the butt of a gun. She showed me the scars on her shoulder and hand, which she told me were the result of struggling during the rapes.

A male relative of hers stated that he witnessed part of this attack and reported it to police, but they appear to have taken no action.

This is just one example of many cases of alleged abuse that we have documented. Security guards have themselves recounted to me abuses that they have either witnessed or committed. In fact, during one of my trips to PNG in 2006, I witnessed a guard yelling at a local woman that he had raped many women, and he was calling for her to come near him so that he could rape her too.

Mr. Chairperson, committee members, we have documented serious and consistent allegations of grave human rights abuses at a mine owned and operated by a Canadian company. Allegations date

back nearly 20 years, and violence appears to be ongoing. Despite the seriousness of these allegations, little has been done to investigate.

But the victims have a right to have their complaints investigated in a transparent, comprehensive, and independent manner. Bill C-300 is a step in the right direction in providing an independent venue to which victims may complain. Importantly, the bill also has the potential to deter and prevent future incidents of brutal violence by promoting accountability for the actions of Canadian companies overseas.

Thank you.

• (1030)

**The Chair:** Thank you very much, Ms. Knuckey.

We'll move into the first round with Mr. Rae, please, and Mr. Pearson.

**Hon. Bob Rae:** Thank you very much.

I'd like to thank all the witnesses for their presentations.

It's difficult, but I want to try to draw it together by asking Mr. McGuinty a question, if I may.

Mr. McGuinty, you described in your presentation that you've already received a lot of complaints or issues being raised that you regarded as frivolous or vexatious or not having any factual basis. Is it not possible to look at something like Bill C-300—and we can all talk about how it might be improved—and say that it's the one mechanism that actually gives you the opportunity to get the minister to say that there is absolutely no foundation for this? As it now stands, you can say there is no foundation to this, but you're you. It's the same thing with me. If I've done or haven't done something and somebody says I have, I'm going to say that I didn't do it. You need somebody else to come in and say that there is no basis for the complaint at all.

Given the fact that now corporate social responsibility is an accepted premise and principle of activity, we have now a series of measures that the government has initiated that in fact provide for some modest accountability—not as much as many people think is necessary, but some. I'm not quite sure if I understand why Bill C-300 is seen by you as so revolutionary.



The fact is, these complaints are being made anyway. We've heard from Mr. Giannini and Ms. Knuckey that they themselves have gone down and interviewed people and have come forward with terrible accusations with respect to activities surrounding a mine in Papua New Guinea. Where do these complaints go if we don't create some kind of process that allows them to be considered and then say, yes, there is a foundation to this one, but there's absolutely no foundation to the other one? I hear your anxiety and I hear your concern, and I'm not insensitive to it. But I'm just wondering, given that there are going to be these complaints and that there is going to be anti-mining agitation around the world—we have it in Ontario and we have it everywhere—why would there not be some advantage to you in having a mechanism to deal with it?

• (1035)

**Mr. William McGuinty:** Just to go back to the very first part of your comment, I don't consider—whether they were actually made as real accusations or as untrue accusations—any of them to be frivolous or vexatious to the way I have to operate my exploration company activities in another country.

I was quite encouraged by, as most of the industry was, and subscribed to the presentation of the corporate social responsibility report that was provided to the government and for the ombudsman. I can appreciate why an ombudsman, when they're talking about how and what an ombudsman might come to produce in such a wide and sort of unknown place as the international extractive sector, could be viewed with some concern by a party in power. When you have an ombudsman in a certain place doing a certain thing, usually it's because the responses and the issues are somewhat predictable. And I don't know if the government would see that predictability within an ombudsman's position.

And I fully expect Marketa to be elevated to the position of ombudsman once everybody is comfortable with it.

The industry did put forward an approval for a mechanism that did deal with the frivolous or the vexatious in its comments where either side could go to the counsellor, in this case, or the ombudsman and make their complaint about the other, or about the situation.

Do I want the minister to say there was no issue? I'd love that. I'd love to have the minister, and the minister of foreign affairs and the minister of natural resources from that country, come and spend as much time as was required to sell that position to those people I will be encountering every day for the next five years on that project. There isn't enough time in the minister's day or enough impact in his decision here to make my work better offshore.

**Hon. Bob Rae:** This is not to be argumentative, but what would you do about the situation you heard about from Mr. Giannini and Ms. Knuckey? Where would that complaint go under the current system? What if there were a complaint and Placer Dome—or now Barrick—said they're sorry, but they've solved this problem and they don't think you have jurisdiction to consider it? What would then happen?

**Mr. William McGuinty:** My familiarity with what would happen is not adequate to respond to that question. However, we are looking at a number of issues, and the contact point is a place where there's already a venue for international discussion about this. Perhaps weight to a complaint should be moved into some stronger position

within the realm of the contact point, in the OECD, or internally to the United Nations. At some point, because in this case we're talking about violence within a community that is in a host nation, that nation has some standing within the United Nations to either answer for its inaction against the company that is working there or to support its stance.

**The Chair:** Mr. Pearson.

**Mr. Glen Pearson:** Thank you, Mr. Chair.

Mr. Beauregard, from the standpoint of an NGO, if you're working in a place, and all of a sudden some company comes in.... I've been in a lot of situations in Asia and Africa that have been quite harmonious and in which the NGOs worked well with the extraction industry, but in some cases the place where the resources are is very difficult; I think of places like Sudan or Nigeria, or whatever it is. For an NGO then to come forward and say, "Look, there are real serious problems here for you as an industry that we want you to understand...". In the case of Talisman, for instance, what ended up happening was that Talisman gave frivolous and vexatious defences. It was different. The NGO was having trouble getting heard, and other NGOs did as well.

What I'm asking, in light of what Mr. McGuinty has also said, is what tools would be necessary on either side to make it more time effective? These kinds of explorations and investigations in remote areas can take a long time. For both industry and the local host communities, and especially NGOs, which have to be careful with the government of the country they're working in, what is the most time-effective way to make them happen?

• (1040)

**The Chair:** Thank you, Mr. Pearson.

Mr. Beauregard.

[*Translation*]

**Mr. Rémy M. Beauregard:** I think there are two ways of resolving that problem. You can solve it when the damage has been done, when a complaint has been filed. Then, an investigation has to be held. Since I presided a human rights commission in Canada for several years, I know that that is a long and complicated process.

However, given Canadian expertise in the area of human rights, I think that in several developing countries, Canadian businesses can bring value added to the promotion and protection of rights, that is to say that they can take preventive measures so that the situations do not occur. They could first of all respect international labour standards, and then respect international standards involving the environment by ensuring that if populations are moved or affected, they receive adequate compensation. That can be done before any problems arise.

The problem is that usually companies try to aim for the lowest possible bottom line and find themselves in a disastrous situation. Canadian companies are not the only ones to find themselves in that situation; it is a generalized problem.

**The Chair:** Thank you very much, Mr. Beauregard.

Ms. Deschamps, you have seven minutes.

**Ms. Johanne Deschamps:** Thank you very much.

Just before hearing you, we heard the Assistant Deputy Minister of Natural Resources; he was our witness. I put a question to him concerning the government's current strategy, that is the Corporate Social Responsibility Strategy. The deputy minister stated that the government had put in place all of the mechanisms and held all of the tools needed to guide foreign companies and make them more accountable for their commitments.

I asked him what sanctions were imposed, concretely speaking, in cases where there are reports of wrongdoing, where a delinquent company is reported. I would like to know if there have ever been any sanctions.

I'm putting the question to Mr. Giannini. According to you, have any companies been the subject of an investigation? Have sanctions been imposed on Canadian companies that committed offences abroad?

[English]

**Mr. Tyler Giannini:** Thank you for the question.

First, I think I would answer that by saying that the review of a situation, such as what was going on in PNG, is an important first step. That review of the process will hopefully bring additional information to light from all the actors. Information is a key piece for eventually assessing what a government would do. That's what the review would hopefully do.

Bill C-300 lays out specific ways in which there may be repercussions in light of a review by the ministers. The details of how the review would be conducted would be laid out. Under international standards right now, there has not been a specific complaint involving this mine to an international body.

Again, to bring home who the main players are here, the actors on the ground are the PNG government, which has not pursued the investigation at the level you would want it to, and the corporations. The home country really can fill a void in terms of review and investigation, which would facilitate, hopefully, better solutions and deterrence of future abuses on the ground.

• (1045)

[Translation]

**The Vice-Chair (Mr. Bernard Patry):** Ms. Deschamps.

**Ms. Johanne Deschamps:** Following your investigation, was a report released?

[English]

**Mr. Tyler Giannini:** The investigation has been ongoing for three years. We anticipate doing a fuller legal brief for submission to this committee.

We were given fairly short notice for appearing today. We anticipate providing further information, with details. So far, our only submission is what we've read into the record and the accompanying MOU, but we anticipate providing additional details at a later date.

[Translation]

**The Vice-Chair (Mr. Bernard Patry):** Ms. Lalonde.

**Ms. Francine Lalonde:** Thank you.

Mr. Beauregard, you talked about prevention, and that is interesting. However, to my knowledge, businesses do not have the means to prepare for that prevention. Certainly, while preparing their management plans, businesses could think about prevention. I saw a few cases in Africa where, clearly, entrepreneurs seemed to be responsible. They provided medical protection to families and education for their children, a roof over their heads, etc., but that was to increase their productivity. When both can be brought together, that is certainly wonderful. Do you have any thoughts on the matter?

**Mr. Rémy M. Beauregard:** My colleague can tell you more if time permits. Before the project is set up, there has to be a tripartite dialogue involving the state that receives the investment, the business that will be investing and the populations that will be touched. That is the first measure that must be taken. That contact has to be established rather than moving populations forcibly and talking later.

We provide a tool to the communities concerned that allows them to assess the impact of such investments on them, and to know what to do to mitigate that impact and set up a dialogue with the state and the business.

[English]

**Ms. Carole Samdup (Senior Advisor, Economic and Social Rights, Rights & Democracy):** Thank you.

Madam Lalonde, I think you know about our human rights impact assessment initiative, but just to go back a little bit, at the time we began this project, we put out an open call for anyone to submit possible projects that we could look at. We were seeking to better understand the human rights impact of foreign investment. So we opened this call to all sectors, all parties. Anyone could submit a project. We received 46 proposals. Very interestingly, of those, 43 were related to mining companies and the impact of mining companies.

For us, that was an indicator of this particular sector's influence over human rights. Perhaps it's because it's so visible to people, but nevertheless, there was a significant concern in the public domain with respect to mining companies.

The other thing we found was that all of the proposals we received were for projects that were already operational, so in fact there was an existing conflict under way. We were surprised to learn that we didn't receive any proposals regarding projects that were in the pipeline, planned projects, new projects, because—in response to your question—the best approach might be to do an impact assessment before the project takes place so that different protection mechanisms can be implemented.

What is the reason for that? After the project, we worked with one large Canadian mining company to try to do an impact assessment before the project was implemented. We ran into considerable obstacles in doing this. There were problems with disclosure. There were problems with access to information. There were problems with the subcontractors. There was a problem with the host government, which didn't want to agree.

These are the kinds of struggles that people are having. The best approach, naturally, would be to do an impact assessment before a project was under way and the human rights violations experienced.

•(1050)

**The Chair:** Thank you, Madam Samdup.

We have to watch our time here, so I'm going to keep you to six or seven minutes.

Mr. Abbott.

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

Thank you to all of our witnesses.

I wish to state right from the outset that with regard to the testimony we've heard on the situation in Papua New Guinea, I don't believe there is any individual in this room, or any individual reading the Hansard of these proceedings, who would not be moved and would not want to have action taken on that. The question is whether Bill C-300 is the correct tool.

Let me ask a rhetorical question. Why do we have swine flu vaccination when we have regular flu vaccination? Why is it important for us to see that 30 million people in Canada have access to swine flu vaccination when we already have a perfectly good store of vaccination for regular flu?

In other words—

**The Chair:** That would be H1N1.

**Hon. Jim Abbott:** Yes, H1N1.

**The Chair:** That's on behalf of all my hog farmers.

**Hon. Jim Abbott:** Yes.

My point is that there has to be something specific to deal with the issue as described by our friends from Harvard, but to respond, at the same time, properly to the concerns raised by Mr. McGuinty.

With that in mind, I would like to return to a consideration of Bill C-300 specifically. This is from Bill C-300, under the powers and functions of the ministers:

In carrying out their responsibilities and powers under this Act, the Ministers shall receive complaints regarding Canadian companies engaged in mining, oil or gas activities from any Canadian citizen or permanent resident or any resident or citizen of a developing country in which such activities have occurred or are occurring.

The question that raises, to my mind, is why couldn't there be complaints from residents of foreign states not residing in the jurisdiction where the act or omission occurred or from individuals who have absolutely no connection whatsoever to the issue? Moreover, why couldn't competitors bring forward complaints against Canadian companies in a frivolous or vexatious way? I'd like an answer to that question, if you could.

I would point out that this is the problem with Bill C-300. The problem I just enunciated is probably times 20, times 30, times 40 throughout this entire bill, which basically makes the bill the wrong flu vaccine.

**The Chair:** Who are you directing your question to?

**Hon. Jim Abbott:** I would like a response from anyone who cares to give one.

**The Chair:** Mr. McGuinty, did you...?

**Mr. William McGuinty:** We all seem to want to answer, at least on this side.

**Mr. Tyler Giannini:** Perhaps I can start.

**The Chair:** Please answer very quickly, Mr. Giannini.

**Mr. Tyler Giannini:** I think the best outcome in this situation would be if the PNG government, the police authorities, and the judiciary there were pursuing the remedies there. I think that would be the existing flu vaccine if we had it, but that hasn't been effective, so this is a step in the right direction. It attempts to set up a system, and the details that would allow for review by the ministers here would be promulgated at a later date.

As Mr. Rae has already indicated, there should be a situation to allow a minister to say that a suit is frivolous, and if a competitor brings a frivolous suit, it would bring a frivolous complaint that would shine very poorly on that competitor. I think safeguards would be in place that would address some of the important concerns you've raised. You don't want frivolous complaints coming forward, but there would be ways that would actually protect the reputation of those who were receiving the frivolous complaints.

**The Chair:** Go ahead, Mr. McGuinty.

**Mr. William McGuinty:** I think it's important to note that "frivolous" and "vexatious" come up a couple of times in various parts of that very short law.

What Bill C-300 lacks, and what I don't know if it can attain, is a way of developing precision about what it does and about what the minister can do. It really does lead to a very....

Somehow a case would have to have a significant merit for the minister to really make a decision. At the end of the day, if it's a complaint brought by a local community member or an NGO or another company—or another government, for that matter—there's no sanction for any of those people. The fact that they've been written up in the *Gazette* is not a sanction for any of these people. The only group being sanctioned at the end of the day is someone who might inevitably be found guilty of a charge of a human rights violation.

It's a question of the volume of complaints versus the validity of those charges. In my experience in working in small communities and in various countries, the timeframes for these discussions and the timeframes for the debate and the accommodations between a company and a host community are very long; the minister is going to come in with a very short timeframe to give an answer to the public, the complainant, and to make something very concise out of what is a very contorted position.

I don't know how Bill C-300 in its current form accommodates that.

•(1055)

**The Chair:** Go ahead, Ms. Samdup.

**Ms. Carole Samdup:** I think the question here is why the voluntary standards are not sufficient. I would like to remind all the members that human rights are not discretionary policies and they're not aspirational goals: human rights are actually international law. There needs to be an accountability mechanism that's applied equally to all actors, and that mechanism should not be voluntary, just as it is not voluntary whether you obey the rules of the road.

I think this is an important thing to remember, and this is the contribution that Bill C-300 seeks to make.

**The Chair:** Thank you very much.

We'll move to Mr. Dewar.

**Mr. Paul Dewar:** Mr. Chair, I'm not going to honour the time that we need for business. I'll just make a comment.

**The Chair:** May I just make one reference too? Today there is no meeting following at 11 o'clock, so we do have a little time if we want to go over.

I noted that we're getting close to the hour and I don't want to cut you on your time.

**Mr. Paul Dewar:** No, and I appreciate the time of our guests.

I'll start with Mr. McGuinty. I want to follow down the path Mr. Rae started.

Your concern seems to be procedural fairness and having a process that isn't just going to clog up with frivolous complaints that will affect your business. Am I right? What you're saying is that it's not all neat and tidy. You're saying that when you get into a proposal, it takes some time, and if all of a sudden there were complaints to consider, not only could that affect your reputation just by the nature of a complaint—I would think you'd be concerned about that—but there would also be the time consumed, which would affect your investment. Is that fair?

**Mr. William McGuinty:** Those are pretty basic business assumptions, but my biggest concern would be my ability after going through this process. Let's just use an exploration company's process. There is no sanction for a company not seeking financial gain in Bill C-300, so I go through this process. I'm guilty or I'm not guilty. I'm still in the community. If I'm guilty, I have a problem. There is a public outing of something I've done as an actor that is inconsistent with international law and human rights. I have an issue that I have to deal with. I'm still there. If I haven't done anything wrong, that issue still sits there in that community, and it's been exacerbated by a much larger external confrontation of that community.

My biggest concern with this process is how Canadian companies go through it and come out the other side, being able to validly and appropriately do their business on the ground in those countries.

**Mr. Paul Dewar:** That's where it has to be put into context, at least from where I'm sitting. The legislation is here for obvious reasons, and to be fair to industry, they're involved in the round table process. Active participants have supported, generally speaking, the recommendations—

• (1100)

**Mr. William McGuinty:** But did not support them—

**Mr. Paul Dewar:** No, it's very clear, and that's why I want to get at the focus of the bill. I'm not getting from my reading of the bill the opportunity for industry to be involved. You have used rhetoric flourish, and certainly people around here do that from time to time. A 300-pound gorilla—

**Mr. William McGuinty:** I try to fit in.

**Mr. Paul Dewar:** I try to stay away from some of that, because this legislation is important.

A 300-pound gorilla, though, is tantamount to saying that this is so egregious that somehow your business will be wiped off the map. Are you really saying that? Are you really saying that if this were brought in you wouldn't be able to do business?

**Mr. William McGuinty:** Let me repeat, it is not my business I'm concerned about—

**Mr. Paul Dewar:** Or any other business....

**Mr. William McGuinty:** It is my ability, as a Canadian exploration person or as a Canadian exploration company, to return to that piece of ground in that country, chastised, if that's the way it is, or vindicated and still be able to conduct, with any positive impact, my work on that ground. It isn't about my business. It's about whether I get hived off this project because, as a Canadian company, I can no longer support it or I can no longer support my activity on that—

**Mr. Paul Dewar:** I'm sorry. Could the inverse be true, though? If you have a process and Canada has a standard—and I'll use the word "brand"—that says we actually don't take this, as was mentioned, as a voluntary process, we're serious about it and we put resources.... And the contextual piece I want to put into play here is that we are actually involved, in industry and government, in bringing forward serious CSR practices and support capacity development. I actually think that's great.

So I'm concerned because I'm hearing you say this is a 300-pound gorilla, on the one hand, and on the other hand I don't see evidence based on the context. It's not just one bill here and that's it. We are doing many other things, and I want to see my country being welcomed because of our practices...and by no means anyone being affected dishonourably with any process that is put forward.

I don't see your argument in this bill because of the provisions that are provided. As you've read the bill, there is a whole component part about vexatious complaints, and if anything, I hope this would be something that would protect you and shine up your reputation, because there are accusations. Some we have heard today and there are others that you hear on a more regular basis.

At the end of the day, I hope you would see this as not some Trojan horse and not another agenda. The agenda is simple, and it's that Canadian companies, when they are abroad, apply the same standards as here in Canada. I think that is what was understood by the round table. At least from this member, that's the intention, and that's what we're trying to do here. It is not some way of trying to assert another—

**Mr. William McGuinty:** All of the things described this morning by the members of Natural Resources Canada were things that my colleagues in the industry, the major associations, individuals who worked on those through the round table process and through the corporate strategy process, worked hard on to make sure that everything was that way. Most of us are trying to make sure that what is done in our practices elsewhere is fair.

**Mr. Paul Dewar:** I'm not challenging that.

**Mr. William McGuinty:** The issue for me, when I look at this process, is that the Canadian government is going to say, we will remove the ability of the Canadian company, in some cases, to possibly develop this asset. That is what this bill is saying.

**Mr. Paul Dewar:** According to what clause?

**Mr. William McGuinty:** You're going to remove the financing mechanisms. EDC or—

**Mr. Paul Dewar:** You could. You're not—

**Mr. William McGuinty:** Maybe I missed it in the law, but I didn't see anything that said there was something you could do otherwise.

**Mr. Paul Dewar:** There's a process first.

**Mr. William McGuinty:** You either did it or you didn't.

So say if you did it, for whatever reason, there's no remedial process...

**Mr. Paul Dewar:** But you were saying there were no sanctions before and that was a concern for you.

**Mr. William McGuinty:** There are no sanctions for an exploration company.

**Mr. Paul Dewar:** Right. Should we go wider then?

**Mr. William McGuinty:** Yes, let's go to the point of the bill, which is to remove this money from the operability of an exploration or development project. Say its legitimate purpose would be to have that company stop. Because there isn't anything in here saying we will remove it if you do this; it says if you're doing it, we'll remove it. So that means that company and the government's ability to move that company in a direction that Canadians think is appropriate is gone, so now the Canadian government steps up and says, we don't think this company was behaving right. The next guy may not be any better, so we want to continue to intervene to make sure those people who we felt were badly impacted don't get any worse treatment. But that's not in the law either.

**Mr. Paul Dewar:** If anything, I'm hearing you say we need to have a wider reach, and not many of us would agree.

**Mr. William McGuinty:** I think if the government thinks it should be asking in a socially responsible way and it could move in that direction, then it's going to have to take up the gauntlet.

● (1105)

**The Chair:** Thank you very much.

With that, we've gone over time. We appreciate all five of you being here this morning, giving us your testimony.

I'm going to ask those of you on the steering committee to stand back. We're going to have an informal discussion about our meetings coming up next week.

We are adjourned.

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