



BILL C-300 POSITION STATEMENT

August 2009

Bill C-300, An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries, is unnecessary, fundamentally-flawed and did not receive the benefits of stakeholder consultation. It is unnecessary in light of the corporate social responsibility (CSR) strategy recently released by the federal government of Canada and comprehensive CSR guidance recently developed by the exploration and mining industries. If enacted, this bill will create reputational risk for responsible companies and diminish the international competitiveness of the Canadian mining industry as a whole; it will replace Canadian companies with others that operate with lesser concern to CSR priorities; it will drive Canadian companies to seriously consider relocating their head offices and listings outside of Canada. Bill C-300 is not supportable in its present form, neither is it amendable. There are more effective ways for enabling accountability and improving CSR performance.

Who we are

1. The Prospectors and Developers Association of Canada (PDAC) is a national trade association formed in 1932 whose members are involved in the mineral exploration and development industry both in Canada and around the world. Our membership includes over 1,000 corporate and 6,000 individual members, comprising mining companies, junior exploration companies, service and consulting firms, executives, geoscientists, prospectors, government representatives, lawyers, accountants and the financial and investment sectors. The Canadian exploration and mining development sector has been a global leader for years and is a clear centre of excellence in the national economy.
2. The PDAC was involved in the year-long federal *National Roundtable Process on Corporate Social Responsibility (CSR) and Canadian Extractive Industries in Developing Countries*. Our representatives participated as members of the multi-stakeholder Advisory Group which generated a consensus report for consideration by the federal government, and which accounted for the views of over 200 stakeholders including NGOs and aboriginal organizations. The federal government responded in March, 2009 with *Building the Canadian Advantage: A CSR Strategy for the Canadian International Extractive Sector*. The PDAC supports this carefully-considered, multi-faceted approach and has made a number of recommendations to strengthen and improve it.¹

We all want the same thing

3. The PDAC shares the underlying sentiment of the sponsors of Bill C-300 concerning corporate accountability and continuous improvement of the CSR performance of Canadian exploration companies working in developing countries. However, we feel strongly that there are better ways of reaching these goals and that measures are being taken by the Canadian government and by the exploration industry itself to get there faster and in a more substantial way. Industry progress in CSR over the last five years

¹ PDAC Response to Federal Government CSR Strategy, April 30, 2009.
<http://www.pdac.ca/pdac/advocacy/csr/pdac-response-govt-csr-strategy-090430.pdf>

has been considerable and will accelerate through encouragement and a determined focus.

Progress on CSR will require collaborative, sophisticated approaches

4. Canadian exploration and mining companies have a strong presence worldwide, with projects located in many different cultural, social and geographic settings, some of which are highly complex and difficult environments in which to operate. The application of CSR is complex by nature and characterized by a significant degree of unpredictability and random events, many of which are outside the control of exploration and mining companies.
5. In essence, Bill C-300 is a deterministic, cause-effect approach which emphasizes accusations and the assignment of blame, rather than identifying solutions for improving performance. This will have very limited application to the complex and unpredictable world of CSR. Effective application of CSR is not about laying blame but laying the groundwork for collaboration, cooperation and improving performance - all strong Canadian traits. Meaningful progress will require strategies that are sophisticated, multi-faceted and flexible.

Exploration and Mining companies require assistance, not more regulation

6. The proponents of Bill C-300 allege that there are numerous Canadian companies involved in human rights abuses in developing countries. These allegations do not derive from objective sources of information and indeed many are frivolous. The companies involved have strongly countered these claims and openly communicated their CSR activities.
7. Most Canadian companies conducting exploration and development projects around the world are engaged in some form of CSR, tailored to the circumstances in which they find themselves and geared to the scope of the project and their internal capacity to deliver. In this way many tangible benefits are being delivered to local communities and host governments in the form of employment, infrastructure, health, nutrition, education, infrastructure, technology and economy.
8. Our industry is under continuous pressure to respond to an ever-expanding spectrum of expectations, broadly defined under the banner of CSR. On the other hand, there has been little consensus on exactly what CSR means and little guidance on how to deliver on its expectations. Thus CSR initiatives vary widely in their quality and effectiveness.
9. PDAC members have indicated that their primary need is for practical and accessible assistance in improving their understanding of CSR and delivering on its expectations rather than more regulations. In March of this year the PDAC launched the first version of *e3 Plus: A Framework for Responsible Exploration*. This systematic approach to CSR good practice includes principles, guidance and comprehensive toolkits on social responsibility, environmental stewardship and health and safety². Performance objectives, reporting guidelines and verification are under development. Our e3 Plus Principles are included at the end of this document.

² www.pdac.ca/e3Plus

Improving performance and accountability will require strengthening of both corporate and host-country governance capacity

10. Bill C-300 is presented as a mechanism for holding Canadian companies accountable in countries of weak governance. However, this is an approach designed to address an apparent symptom, rather than the real underlying problem – that of weak governance and lack of institutional capacity in host countries. The most effective approach will involve a combination of improved CSR performance and strengthening host-country governance.
11. Corporate accountability is an important subject addressed within the e3 Plus Framework. Recommended practices are provided to determine accountability and what steps should be taken when the company or its employees are found to be the cause of a situation. E3 Plus will also include performance objectives, reporting guidelines and an assurance system, all of which are key components of corporate governance and accountability. Improving host-country governance however, is also critical to achieving accountability objectives and to effectively address the root causes of conflict. Attention and resources must be given to both CSR and host-country governance capacity building.
12. It is the sovereign right and responsibility of host country governments to manage development of their resources and to hold exploration and mining companies accountable on the basis of their laws and regulations. However, many countries lack the governance and institutional capacity to enforce legislation and to ensure a stable regulatory regime. This results in external realities outside of the control of companies including bribery and corruption, lack of transparency, unfair distribution of wealth, lack of benefits to local societies and in some cases, civil conflict.
13. The most effective way to counter the challenges arising from weak host-country governance is to address the problem directly; that is, through programs designed to assist host countries to strengthen institutional capacity. The government of Canada has programs in place designed for this purpose as do other northern hemisphere countries; however, these programs are currently given only limited support. PDAC calls on the federal government to strengthen these programs and increase their effectiveness, efficiency and delivery on the ground.

Bill C-300 is not in keeping with the spirit of the CSR Roundtable Advisory Group Report

14. The PDAC supported **in principle** the recommendation by the CSR Roundtable Advisory Group for the creation of an extractive sector Ombudsman function. The potential benefits we saw were the creation of a mechanism for dispute resolution and mediation services, and the provision of expert, constructive advice to companies in need of assistance. Also important to us was the intended mandate of the ombudsman to receive complaints from all parties, including companies, the latter in recognition of the reputational harm that frivolous or unfounded allegations from anti-mining interests can cause.
15. Bill C-300 is not in keeping with the spirit and intent of the CSR Roundtable recommendation. The Roundtable recommendation was based on a policy framework designed to improve industry performance as opposed to a punitive, legislative approach. In addition, the Roundtable agreed to a collaborative process involving input from all key stakeholders in the process of determining how the ombudsman recommendation could be taken from a concept to reality. While a small group of civil society organizations were involved in the drafting of the bill, our industry and other key stakeholders were

excluded from the process and not consulted on the approach taken, thereby calling into question the objectivity and genuine interest of the organizations involved.

Bill C-300 will cause more problems than it will solve

16. Bill C-300 was not developed on the basis of careful consideration and exacting research, aspects that are widely acknowledged as critical in the development of the complex and sensitive nature of an ombudsman function. The bill, unfortunately, takes a punitive approach and risks politicizing the issue of social responsibility without offering a clear process for resolution. Good progress over the past few years that was realized through the collaborative work of the Roundtable, the development of industry good practice guidance (PDAC's e3 Plus and the Mining Association of Canada's Toward Sustainable Mining-TSM) and the government's CSR strategy, could be replaced by a politically charged process where allegations can be made in bad faith, without merit and with no meaningful remedy for the targeted company. This is not an approach that contributes to sharing good practices and improving performance. We have little doubt that implementation of the bill will be a net negative to those countries which most need the benefits of CSR as practiced by the Canadian industry now and in the future.
17. The risk is high that anti-mining elements of civil society, in Canada and abroad, will make use of this proposed legislation with frivolous, vexatious complaints, risking significant damage to the reputation of companies that are innocent of any allegations and requiring significant expenditures to be made in their defense.
18. No other country is attempting to control the foreign activities of its domestic extractive industry as proposed by Bill C-300. If approved, Bill C-300 will negatively affect the international competitiveness of Canadian companies. It will drive Canadian companies to seriously consider relocating their head offices and listings outside of Canada.

The Government of Canada's CSR Strategy is an effective approach worthy of support

19. *Building the Canadian Advantage: A CSR Strategy for the Canadian International Extractive Sector operating abroad* was released by the federal government in March, 2009. It was informed by the CSR Roundtable process which included civil society, industry, community leaders the general public and many other stakeholders. It is the result of careful deliberation and debate among senior officials and cabinet ministers from a number of federal government departments. The result is a carefully considered, multi-faceted approach which appropriately matches the complexity of CSR and lays the groundwork for successful application by the extractive sector operating abroad in a variety of challenging environments. It commits to a process of continuous improvement and stakeholder involvement going forward. Indeed, we believe the process itself and the government's report serve as an example to the world and promises to encourage wider adaptation of the very best CSR programs and practices available, thereby benefitting a valuable economic generator here in Canada and dozens of countries around the world which are seeking and deserve a high degree of sensitivity and care in the development of their mineral resources.

e3 Plus : A Framework for Responsible Exploration

Principles

Note: The Principles are supported by guidance and three comprehensive toolkits providing good practice knowledge on social responsibility, environmental stewardship and health and safety. Performance objectives, reporting guidelines and an approach to verification are under development. Access to e3 Plus is free at www.pdac.ca/e3Plus.

1. Adopt responsible governance and management

Objective: To base the operation of exploration on sound management systems, professional excellence, the application of good practices, constructive interaction with stakeholders, and the principles of sustainable development.

2. Apply ethical business practices

Objective: To have management procedures in place that promote honesty, integrity, transparency and accountability.

3. Respect human rights

Objective: To promote the principles of the United Nations Universal Declaration of Human Rights by incorporating them into policies and operational procedures for exploration.

4. Commit to project due diligence and risk assessment

Objective: To conduct an evaluation of risks, opportunities and challenges to exploration, and prepare strategies and operational plans to address them before going into the field.

5. Engage host communities and other affected and interested parties

Objective: To interact with communities, indigenous people, organizations, groups and individuals on the basis of respect, inclusion and meaningful participation.

6. Contribute to community development and social wellbeing

Objective: To have measures in place which support the social and economic advancement and capacity building of communities whose lives are affected by exploration while respecting the communities' own vision of development.

7. Protect the environment

Objective: To conduct exploration activities in ways that create minimal disturbance to the environment and people.

8. Safeguard the health and safety of workers and the local population

Objective: To be proactive in implementing good practices for health and safety performance in all exploration activities and seek continual improvement.

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