

Bill C-300 Myths & Facts

Myth: *Bill C-300 is consistent with recommendations in the 2007, National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries, Advisory Group Report.*

Fact: Bill C-300 is not consistent with the Advisory Group recommendations. It seeks to establish a punitive, extraterritorial legal approach towards ensuring compliance with CSR standards instead of the mediative, policy-based approach proposed by the Advisory Group.

- Under Bill C-300, Ministers that receive complaints against an extractive sector company must investigate and then issue either a “compliant” or “non-compliant” ruling within eight months. If a company is found to be “non-compliant,” the Minister shall order the withdrawal of all EDC and Canada Pension Plan funding immediately. Companies will not be given the opportunity to correct their non-compliance. No distinction will be made between arguably “trivial” or “serious” findings of non-compliance.
- Under the Advisory Group Report, an independent ombudsman office will receive complaints and, after an initial investigation and fact-finding review, refer all instances of non-compliance to a Compliance Review Committee. This committee will determine the nature and degree of a company’s non-compliance and attempt to bring the company into compliance through external, dispute-resolution processes; proposing corrective measures for a company to take; and monitoring progress to ensure the company does become compliant. Only in cases of serious non-compliance, and where the committee determines that remedial steps have not been or are unlikely to be successful, will the Compliance Review Committee make recommendations with regard to the withdrawal of financial and/or non-financial services by the Government of Canada.
- Under Bill C-300, Ministers will base CSR compliance requirements on a set of international CSR standards which are still in the process of being defined and agreed upon by the international community. Companies availing themselves of Government of Canada funding or support will need to stipulate in any agreements with host countries, or contracts with suppliers, that financing could be withdrawn at any time in the event of a “non-compliance” ruling on a complaint against the project. Regardless of the laws in the host country, all new and pre-existing agreements will be subject to the Canada’s largely-unwritten CSR laws for the extractive sector.
- Under the Advisory Group Report, the Government of Canada would develop and publicly release guidelines that clearly measure what constitutes a “serious failure” to follow Canadian CSR guidelines. All EDC and Pension Investment agreements would include this information so project investors and host governments would be aware of CSR requirements, and the conditions under which funding could be withdrawn, at the outset of project negotiations. There would be no surprises as companies and host countries would know these contractual obligations in advance. The financial penalties outlined in the Advisory Group Report would not be applied retroactively.

Myth: *Bill C-300 would not harm the Canadian extractive sector.*

Fact: Experts from Export Development Canada (EDC) have stated emphatically that Bill C-300 would put Canadian companies at a significant disadvantage to exporters from other countries, and would inhibit EDC’s ability to support Canadian companies.

- Imposing compliance standards based on international CSR standards that are still in the process of being defined and agreed upon by the international community would create uncertainty over requirements to maintain financial support from the Government of Canada.
- According to EDC, companies would be unwilling to sign agreements that permitted EDC to terminate contracts based on such uncertainty.
- They insist that Bill C-300 would place the \$27.4 billion of exports and investments in the extractive sector facilitated by EDC at risk, as companies look elsewhere for support.

Myth: *Under Bill C-300, companies will not be harmed by frivolous or vexatious allegations because the Ministers are given powers to dismiss such complaints.*

Fact: Under Bill C-300, even “frivolous and vexatious” complaints will require an investigation.

- Although section 4(7) of C-300 allows the Ministers to dismiss a complaint determined to be “frivolous or vexatious,” they must also provide reasons for this determination and publish these reasons in the *Canada Gazette*. This requirement will make it almost impossible to dismiss a complaint, out-of-hand, without some sort of an examination.
- Canadian companies will be subjected to the cost, disruption and reputational impact of accusations that may eventually be dismissed as “frivolous or vexatious.”

Myth: *Currently, there are only voluntary CSR standards and frameworks for multinational extractive sector corporations to follow for projects in developing countries.*

Fact: All major lending institutions (up to 80 percent of global project financing for extractive-sector projects) are signatories of the Equator Principles. Signatory institutions must refrain from financing projects that fail to meet the specific social and environmental standards set out in the Equator Principles. Most, if not all, Canadian mining projects will require access to capital and therefore must meet those standards. This is in addition to the host country’s laws and regulations.

Myth: *The Government of Canada ignored most of the recommendations of the 2007 Advisory Group Report of the National Roundtable on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries.*

Fact: While not all of the Advisory Group Report’s were adopted by the government of Canada, the government’s 2009 CSR Strategy for the Extractive Sector was directionally correct and an important first step. This strategy provides for the creation of a CSR Centre of Excellence, and the promotion of internationally recognized CSR guidelines, which were both key recommendations in the Advisory Group’s Report. It has also placed Canada in a leadership position with the creation of CSR Counsellor devoted specifically to the extractive sector.

Myth: *The Canadian extractive sector has a bad track record operating abroad.*

Fact: The Canadian extractive sector faces the same challenges as other multinational corporations operating in countries with weak or non-existent governance capacities.

- Due to a general lack of reliable information, concerns about the human rights impact of extractive operations and the challenges underlying them are difficult to assess in quantitative terms with respect to their scope and frequency.
- The international community is still struggling with how companies can integrate human rights issues into daily global business practices and currently no internationally recognized CSR standards for financial institutions exist.
- However, there are currently over 1000 Canadian mining and exploration companies working in over 100 countries around the world on over 5000 projects. Since 2000, Canada’s OECD National Contact Point, which is mandated to receive complaints regarding multinational corporate conduct, has received only seven submissions.