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RESPONSIBLE BUSINESS CONDUCT IN A COMPLEX WORLD

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INTRODUCTION

During recent debates regarding the oversight of Canadian companies' international conduct, some stakeholders have suggested that business is satisfied with the status quo and wants nothing to change. This is not the case. Business people know how necessary—and potentially beneficial—change can be, particularly in today's reality of financial uncertainty and globalization. Change for change's sake, however, can be harmful and its impact felt by more than those it is meant to directly affect.

To move the discussion forward regarding federal government oversight of the conduct of Canadian companies, the Canadian Chamber of Commerce held roundtable discussions with more than 20 leaders from several business sectors to obtain their views on the optimal structure for federal oversight of the conduct of firms operating internationally. The Canadian Chamber also spoke with senior representatives of non-governmental organizations (NGOs) that had expressed views on this issue. The roundtables were moderated by Leonard Edwards, a former deputy minister of both International Trade and Foreign Affairs. Mr. Edwards also met with the NGOs.¹

The Canadian Chamber's objective was to answer the question: How *should* the federal government oversee the international conduct of Canadian companies? The companies and NGOs also offered suggestions on how businesses could improve upon the execution and communication of their conduct.

This paper summarizes these discussions by:

- Outlining areas of strength in current federal government oversight of corporate conduct
- Identifying areas where the federal government could be more effective and offering recommendations on how it could do so
- Forwarding new considerations for the government in its oversight of international business conduct
- Recommending ways businesses could improve the execution and communication of their behaviour



¹ Halifax Initiative, North-South Institute, Amnesty International, Canadian Business for Social Responsibility, Devonshire Initiative.

THE CONTEXT

The Canadian Chamber of Commerce has long-standing positions on responsible business conduct. Our members recognize the business value of sustainable domestic and international business operations as well as effectively—and responsibly—managing the economic, social and environmental impacts of their operations. They also know that a single poor performer can taint the reputation of all Canadian companies operating in a particular sector or region and diminish their prospects in seeking international partnerships.

The Canadian Chamber believes businesses are accountable to their shareholders, host countries, communities and employees for conducting their activities in a manner which is safe, respectful, legal and sustainable. We believe the overwhelming majority of Canadian firms do that and can answer proudly for their performance across the globe.

The Canadian Chamber's position is that the federal government should:

- Promote and celebrate the responsible business conduct of Canadian companies
- Maintain responsible business conduct as a voluntary corporate practice consistent with internationally-recognized and endorsed guidelines
- Work with host governments to develop laws and regulations as well as build their capacity to enforce them creating certainty for, and compliance by, businesses
- Ensure our trade commissioners are equipped to support and advise Canadian companies when host governments (politicians or officials) have acted improperly and/or illegally

- Publicly report unacceptable behaviour by Canadian companies based on substantiated facts
- Build more capacity into its existing offices and bureaucracies rather than establishing new ones, particularly those that are sector-specific
- Encourage non-governmental organizations to operate in a transparent and accountable manner through the adoption of an explicit governance code

Governments are—and must remain—the primary means for ensuring economic, environmental and social protections. Business' role is—and should remain—to respect these protections.

"Given our size and our level of investment, we can make a change, but we cannot make it directly. We need to do it with Canadian government ... or credible NGOs that really want to come in and make those significant changes which will benefit us in the end, but it will benefit pretty much everybody in the country also."

- Business roundtable participant.

BUSINESS CONDUCT OVERSIGHT: WHAT DOES BUSINESS WANT?

The Canadian Chamber has expressed our opposition to attempts to impose punitive legislative measures on Canadian companies. While, to date, these attempts had been aimed at the extractive sector, they had the potential to affect the entire business community.

Ideally, no sector should be singled out. However, Canada is a natural resources powerhouse. In addition to our natural resources wealth, many of our extractive companies have operations outside Canada, and 58 per cent of the world's publicly-held mining companies are traded on the Toronto Stock Exchange and the TSX Venture Exchange². The presence of Canada's mining sector in certain regions of the world, such as in Mexico, South America and sub-Saharan Africa, means that it attracts a lot of attention.

What became evident during discussions on how Canadian extractive companies' international operations should be overseen was that business was very effective in articulating what direction it *did not* want the government to take. However, the business community was not as successful in expressing what it *did* want, leaving it open to accusations that it wants nothing to change. Our discussions demonstrated this is not so.

The Canadian Chamber's perspective on the issue of businesses' international conduct was the backdrop for our support for the federal government's Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector (The Strategy), introduced in March 2009. The Strategy was the federal government's response to the recommendations of the National Roundtables on

Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries and is consistent with the position of the Canadian Chamber. The Strategy commits the government to continuing to promote and support responsible business conduct as well as provide additional tools to enable businesses to pursue socially responsible practices.

The Strategy leverages existing internationally-recognized social responsibility guidelines and reporting mechanisms, while clearly articulating Canada's expectations of companies to behave responsibly. It acknowledges the critical role of governments in developing countries and commits to providing additional resources to them; for example, through the Canadian International Development Agency (CIDA), Natural Resources Canada, Foreign Affairs and International Trade Canada and international bodies such as the Extractive Industries Transparency Initiative. The Strategy also acknowledges the ongoing responsibility of the government and its agencies/Crown corporations (e.g. CIDA and Export Development Canada) to promote socially responsible behaviour to Canadian companies.

The Strategy also established the CSR Centre of Excellence within the Canadian Institute of Mining, Metallurgy and Petroleum as well as the Office of the Extractive Sector CSR Counsellor to review the practices of Canadian companies operating outside Canada. The Counsellor's role is to act as an impartial advisor/facilitator to bring parties together and to advise on the implementation of the social responsibility performance guidelines endorsed by Canada.³ The Strategy will be subject to a five-year review in 2014.

² tmx.com, accessed February 22, 2012

³ The performance guidelines against which the Counsellor measures the international conduct of Canadian extractive companies are the *International Finance Corporation Performance Standards*, the *Voluntary Principles on Security and Human Rights*, the *Global Reporting Initiative* and the OECD's *Guidelines for Multinational Enterprises*.

CURRENT TRENDS, CHALLENGES AND OPPORTUNITIES

The increasing power of global economic forces, particularly in emerging Asian and South American economies, and a relatively weak U. S. economy means more Canadian companies must pursue opportunities beyond their traditional domestic and international markets. International investment is critical to our competitiveness and prosperity and Canadian companies know it. In the third quarter of 2011, the value of Canadian direct investment abroad was \$50.2 billion higher than for the same period in 2010.⁴

There are rewards associated with expanding the scope of a business internationally. There are also risks, particularly in less developed countries which often have regulatory and legal frameworks that have yet to catch up with the business norms of the developed world.

The complexities of the expanding scope of global business interests were discussed in the January 2011 issue of the *Harvard Business Review* by Prof. Michael E. Porter and Mark R. Kramer. “In recent years, business increasingly has been viewed as a major cause of social, environmental and economic problems. Companies are widely perceived to be prospering at the expense of the broader community.” In the same article, they also

said, “Government and civil society have often exacerbated the problem by attempting to address social weaknesses at the expense of business.”⁵

The relationships amongst businesses, governments, communities and NGOs, particularly in countries with weak governments, is a bigger challenge now than it has ever been because the presence of Canadian companies is growing in countries where the standards of behaviour and governance are not the Canadian norm. The conduct of Canadian companies is doubly-challenged as they want/are expected to apply Canadian norms in non-Canadian environments.

The term used to describe the business model of complying with ethical norms, regulations and guidelines as well as responsibly engaging with stakeholders is “corporate social responsibility” (CSR) or “responsible business conduct.” To ensure this term, and the subject of this paper, is not confused with corporate “philanthropy,”⁶ we have chosen the definition used by the Organisation for Economic Co-operation and Development (OECD) in its Guidelines for Multinational Enterprises: “responsible business conduct in a global context consistent with applicable laws and internationally recognised standards.”⁷

⁴ Statistics Canada, *The Daily*, Monday, December 12, 2011

⁵ Michael E. Porter and Mark R. Kramer, Creating Shared Value, *Harvard Business Review*, January 2011.

⁶ The *Oxford Concise Dictionary* defines philanthropy as “practical benevolence” or “charity on a large scale.”

⁷ OECD Guidelines for Multinational Enterprises, 2011.

THE WORLD IS WATCHING: MOVING RESPONSIBLE CONDUCT FROM THE PERIPHERY TO THE CORE OF BUSINESS OPERATIONS

All businesses know they have to communicate their conduct at home and abroad effectively or run the risk of becoming defined by an incident rather than their general practice. As businesses spread their reach globally, the scrutiny of their operations at home and abroad grows.

The number of international guidelines for corporate conduct continues to grow as well. Recent developments include the ISO 26000 Social Responsibility Guidance, the United Nations' Guiding Principles for Business and Human Rights, and a 2011 update to the OECD's Guidelines for Multinational Enterprises.

How businesses conduct themselves and ensure those who contribute to their operations (for example their suppliers) behave appropriately is under the microscope. And companies, knowing how important their reputations are to their profitability, are taking this scrutiny seriously. For example, late in 2011, Apple® announced that it had hired a firm to audit the environmental practices of its suppliers in China following criticism from Chinese environmental groups. Apple® has also recently made its list of suppliers public. And, as questions about the working conditions in its Chinese production facilities became more intense, it became the first high-tech company to join the Fair Labour Association. This means that labour inspectors will now regularly visit its production plants.



For most businesses, responsible conduct has moved from something often considered discretionary and philanthropic (doing “good”) to something that is core to their operations (doing “right”). Seventy-one per cent of Canadian corporate executives say they believe CSR is “an essential part of doing business” and needs to be recognized and reported.⁸ They know that their conduct and how it is perceived has to be managed just as seriously and with as much focus as getting products to market. It can put their business at risk if they do not get it right.

⁸ The Gandalf Group, Quarterly C-Suite Survey, *The Globe and Mail*, December 19, 2011.

In the competition for capital, a solid corporate reputation can mean the difference between obtaining financing or not. It also affects the sources of that capital. For financial institutions, the management of risk associated with financing businesses is “huge” and has necessitated tightening the scrutiny/due diligence associated with financing and their own suppliers’ RFPs.

Canadian companies that require financing from the capital markets simply cannot obtain it unless they can demonstrate they are abiding with one or more of the international guidelines that are now in place. Export Development Canada (EDC) requires that companies seeking its products and services demonstrate a solid record of and/or (for new ventures) commitment to responsible conduct including the signing of anti-corruption declarations. EDC carries out human rights assessments and environmental reviews depending on the type of venture. Companies seeking EDC’s support must adhere to the International Finance Corporation’s Performance Standards on Social and Environmental Sustainability.⁹

There is also pressure on stock exchanges from the capital markets to impose mandatory disclosure requirements and to have an advisory note on the

quality of the social responsibility reports of the companies listed. For instance, the Toronto Stock Exchange offers workshops to help issuers better understand the disclosure requirements of the Ontario Securities Commission. It is a complex environment for both issuers and investors. An example is the differing standards—for example regarding greenhouse gas emissions—in different countries.

One of the companies represented at our business roundtables said it demands that all of its suppliers—like it—become members of TRACE and adhere to its principles.¹⁰

Many companies are finding that not only do governments, their financiers, their customers and NGOs expect them to behave responsibly, their employees do as well. A solid, positive, corporate reputation is becoming a differentiating factor in the recruitment of talent.

Some NGOs we consulted commented that countries with poor international reputations are starting to take notice that good behaviour means good business and are exploring ways to improve the conduct of their companies that operate internationally.

⁹ The International Finance Corporation’s Performance Standards include Social and Environmental Assessment and Management System; Labour and Working Conditions; Pollution Prevention and Abatement; Community Health, Safety and Security; Land Acquisition and Involuntary Resettlement; Biodiversity Conservations and Sustainable Natural Resource Management; Indigenous Peoples; and Cultural Heritage.

¹⁰ TRACE International, Inc. is a non-profit membership association that pools resources to provide practical and cost-effective anti-bribery compliance solutions for multinational companies and their commercial intermediaries (sales agents and representatives, consultants, distributors, suppliers, etc.). https://secure.traceinternational.org/Trace/About_Trace.html

RESPONSIBLE CONDUCT CAN BE COMPLEX, EXPLAINING IT MORE SO

Companies know they have to explain themselves and be transparent. If businesses do not establish their own narratives, they will have one, or more, thrust upon them. They know it is not enough to *be* virtuous. Companies have to be *seen* to be virtuous, and they have to be ready to submit their conduct to the scrutiny of third-parties.

And, the scope of the scrutiny of business conduct is increasing. One roundtable participant said his company is receiving more requests from clients with international operations regarding products related to more than what one would traditionally associate with business risk (e.g. supply chain issues). Another said his company faces scrutiny regarding protecting customers' privacy. The environment becomes even more complicated, he added, if the firm is a direct supplier to governments.

Businesses believe they conduct themselves more responsibly than NGOs and the public gives them credit for. What may seem like a simple concept—i.e. responsible behaviour—is incredibly complex as it encompasses many domains including the environment, human rights, labour relations and corruption. Each has its own universe, yet the decisions made in one can affect the others. Roundtable participants agreed that it is vastly more difficult doing business in developing countries than people realize.

One extractive sector company spoke of being under pressure to pay bribes to officials or face accusations of inappropriate behaviour. The same company also experienced armoured vehicles arriving at their mine's gate. The occupants of the vehicles did not come to rob the ore but to demand weapons.

Roundtable participants also acknowledged the reality that no matter how hard they try to behave appropriately, many NGOs believe that companies will never behave as responsibly as they should or could as long as guidelines are voluntary. It is the opinion of these NGOs that, because governance capacity in many host countries is so weak, Canadian companies will behave appropriately only if they are legally-bound to behave in accordance with Canadian laws wherever they operate.

FEDERAL OVERSIGHT OF BUSINESSES' CONDUCT

The federal government's oversight of businesses' international conduct touches businesses in several ways.

From a legislative perspective, the Corruption of Foreign Public Officials Act subjects companies to prosecution for offences in Canada and abroad. In 2011, a Canadian resource company was charged under the act and the Canadian business community was put on notice that its behaviour—at home and abroad—is being monitored.

The act, however, applies only after it has been proven that companies have broken the law. The act could be improved—and taxpayer, business, NGO and community resources better utilized—if it were amended to include an advance opinion process to prevent companies from getting into difficulties in the first place. Such a provision exists under the United States' Foreign Corrupt Practices Act. And for companies considering taking over the operations of another firm, there is no means to voluntarily disclose the wrongs of previous owners, pursue an alternate sanction procedure and make things right. Companies learning of previous owners' wrongdoings have the options of walking away and leaving the situation unresolved or taking over and facing the full force of the act. Needless to say, companies walk away. This leaves the situation unresolved and the takeover of the operation open to firms from countries with low or no business conduct benchmarks.

Canada, as a member of the OECD, is obliged to have a national contact point (NCP) to administer the OECD's Guidelines for Multinational Enterprises in Canada. The Department of Foreign Affairs and International Trade provides the secretariat for

Canada's NCP working with several government departments and agencies including the Canadian International Development Agency, Environment Canada, Finance Canada, Human Resources and Skills Development Canada, Industry Canada, Aboriginal and Northern Affairs, and Natural Resources Canada. Canada's NCP is responsible for:

- Promoting awareness of/responding to inquiries regarding the OECD's Guidelines for Multinational Enterprises
- Acting as a mediator to resolve "specific instances" or complaints to the NCP regarding an alleged breach/or breaches of the guidelines
- Reporting annually to the OECD

The federal government, through the Canadian Trade Commissioner Service, provides support throughout the world to Canadian businesses, NGOs, host governments and communities.

In addition to the OECD's guidelines, the federal government endorses and is committed to promoting:

- The International Finance Corporation's Performance Standards on Social and Environmental Sustainability
- The Voluntary Principles on Security and Human Rights¹¹
- The Global Reporting Initiative¹²
- Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector

11 The Voluntary Principles on Security and Human Rights—an initiative of governments, NGOs and companies—were established in 2000. They are the only human rights guidelines designed specifically for the extractive sector and are focused on projects involving private or public security resources.

12 The Global Reporting Initiative provides a framework for organizations to measure and report their economic, environmental and social performance.

THE WAY FORWARD

The businesses we spoke with said federal government departments work effectively in several ways with Canadian businesses overseas including:

- Supporting the branding of Canadian companies and their strengths internationally
- Providing guidance to businesses abroad through the Canadian Trade Commissioner service
- Promoting Canadian companies' responsible business conduct—and this type of behaviour in general—by bringing foreign officials to visit the operations of Canadian companies in

developing countries to demonstrate that, not only are they are conducting themselves as they should, but that it is possible to run businesses responsibly and profitably

Some businesses believe that much of the federal government's good work would be more effective if it adopted a more coordinated, whole-of-government approach. Federal departments and agencies seem to be working in silos in implementing policy as well as in dealing with businesses and other governments. As a result, the total impact of the government's efforts is not recognized for being as powerful as it is.

A MORE EFFECTIVE INTERNATIONAL PARTNERSHIP WITH CANADIAN BUSINESSES

Some of the NGOs we spoke with said the federal government should do more direct outreach to companies regarding its expectations of how businesses should conduct themselves, particularly those firms with which it has concerns. If private discussions do not yield results, they said, the government should then “go public” with its issues regarding a specific company or companies.

Good behaviour, they said, should also be publicly acknowledged. At least one NGO suggested the federal government should publicize companies “doing a good job” in their business conduct. This attention, they added, would act as an incentive and inspire other companies.

The companies we spoke with agree. The government, they said, could be much more assertive in promoting the positive effects of Canadian companies' international operations, particularly in the extractive sector where Canada is a world leader and a major presence in the developing world. While bad behaviour is quickly publicized and becomes part of the public policy debate, a lot that is good is unrecognized.

The business people we spoke with also said the government should press foreign governments more to ensure their own companies adhere to internationally-recognized social responsibility guidelines. This would level the playing field for Canadian companies operating internationally. They also said they have no issue with the government pursuing companies that are behaving badly.

BUSINESSES NEED CLARITY REGARDING WHICH GUIDELINES TO FOLLOW

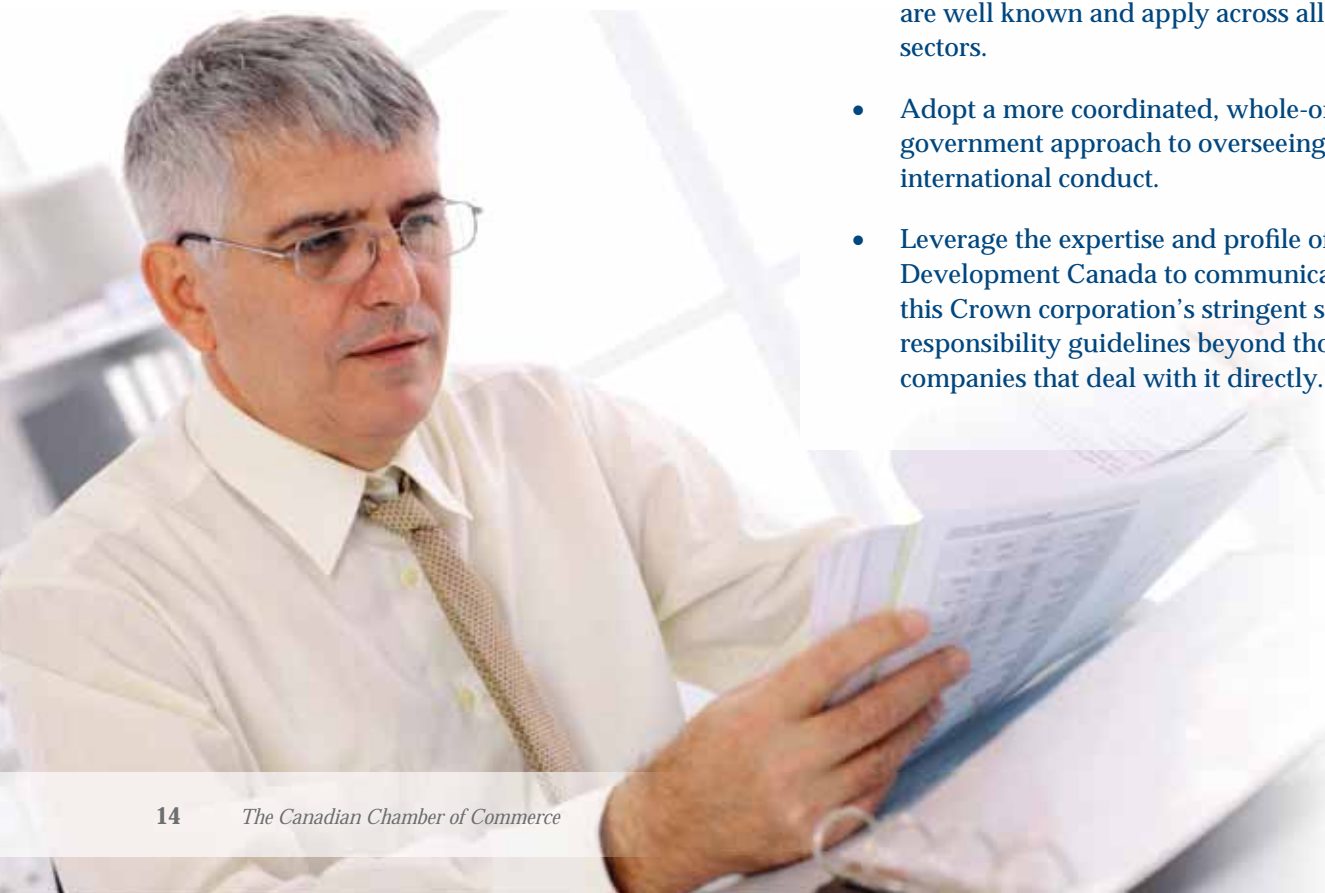
Companies told us there is a lot of confusion in the business community regarding just what social responsibility guidelines firms should be looking to for direction in their conduct. There are many internationally-recognized guidelines and selecting which ones to follow can be daunting for even the largest and most experienced international players. Smaller firms find the various international guidelines overlapping and extremely confusing.

The federal government would be assisting companies greatly if it were to endorse one or two international guidelines and clearly communicate them so that businesses—and NGOs—know what is expected. “We want to be compliant,” said the representative of one small extractive company, “but there is so much out there. A company like ours really could use a bit of help in terms of finding our way and determining what is the best for an organization like ours.” This type of clarity would be hugely helpful to business. And while it will likely not be enough to satisfy many NGOs, it would be a starting point.

RECOMMENDATIONS:

That the federal government:

- Amend the Corruption of Foreign Public Officials Act to include a means for companies to seek an advance opinion on situations they believe could cause them to break the law and a voluntary disclosure process with alternate sanctions.
- Be more assertive in promoting the positive effects of Canadian companies’ international operations, particularly in the extractive sector where Canada is a world leader and a major presence in the developing world.
- Choose one or two internationally-recognized guidelines on social responsibility and promote them with Canada’s business community. The guidelines recommended are the OECD Guidelines for Multinational Enterprises and the International Finance Corporation’s Performance Standards on Social and Environmental Sustainability, both of which are well known and apply across all business sectors.
- Adopt a more coordinated, whole-of-government approach to overseeing businesses’ international conduct.
- Leverage the expertise and profile of Export Development Canada to communicate this Crown corporation’s stringent social responsibility guidelines beyond those companies that deal with it directly.



DOING MORE WITH CURRENT GOVERNMENT OFFICES

The companies we spoke with said that any government framework for responsible business conduct needs fair rules, due process, universal accountability and adequate resources. It must also reflect the perspectives of the relevant stakeholders, including business. However, before any new mechanisms or regulations are pursued, the companies told us the government's primary focus should be on ensuring that its current offices are operating as effectively as they could be and are resourced as they should be. Improving Canada's National Contact Point was an example they cited. The United Kingdom's (UK) NCP was mentioned by businesses and at least one NGO as being very effective. Since a review of its NCP in 2006, the UK has made several reforms including:

- Instituting a steering board made up of business, labour, NGOs, parliamentarians and government officials
- Establishing clear timeframes for the review process
- Issuing a "fully-reasoned" final statement for all cases
- Using professional mediators to review cases
- A review mechanism for NCP procedures that sees any alleged irregularities referred to the Steering Board¹³

Businesses felt that there are opportunities to strengthen Canada's NCP. Recognizing that the government is working to reduce its spending and the federal deficit, some companies suggested that user fees for those using the NCP should be considered. Businesses also said that any modifications to Canada's NCP should ensure that accountability measures are built into the process for all parties. This would avoid cases—which some companies we spoke with have experienced—of allegations being made against companies to the NCP yet the complainant refuses to come to the table, stalling the process and wasting valuable resources in government, business and NGOs. Businesses do not mind being held accountable but believe those scrutinizing them should be accountable and transparent as well.

At a minimum, firms believe the federal government should undertake an effective communications program to create awareness of the NCP in the business community.

¹³ Human Rights Watch, US: Review of the National Contact Point for the OECD Guidelines for Multinational Enterprises , Statement of Arvind Ganesan before the US Bureau of Economic, Energy, and Business Affairs, November 3, 2010 (www.hrw.org/news/2010/11/08/us-review-us-national-contact-point-oecd-guidelines-multinational-enterprises)

BUSINESS IS OPEN TO NEW MECHANISMS FOR DISCUSSION AND OVERSIGHT

The firms we spoke with told us they are open to new approaches to the oversight of their conduct. Perhaps, more importantly, businesses are interested in pursuing ways to improve their relationships with NGOs.

The idea of an ombudsman to take complaints regarding the behaviour of Canadian extractive companies operating in developing countries and to mediate between the complainant and the firm and, potentially, have sanctioning powers has been discussed since the 2007 report of the National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries. The Canadian Chamber's position was that establishing another bureaucracy before ensuring existing offices were being fully leveraged would be cumbersome and expensive and had the potential to put Canadian companies at a competitive disadvantage.

The government must ensure its current offices have the resources they need and are operating as effectively possible. Only after this is accomplished—and a further need clearly demonstrated—would businesses be receptive to the creation of a social responsibility ombudsman for all sectors. It would be essential that such an office be housed outside of the government and that it have clear rules, due process and accountability expectations for all parties—businesses, NGOs and other complainants. To be effective, the office would need adequate resources to conduct investigations and accept complaints only from those directly

involved in the allegations—or representing them directly—and only after all other avenues have been pursued in the host country/countries in question.

One of the thorniest issues in the oversight of businesses' conduct is accountability measures that are seen as credible. Businesses say their conduct respects—and in many cases exceeds—the laws and regulations of the countries where they operate. In many cases, companies simply are not believed. While the debate between businesses and NGOs regarding responsible business conduct can be acrimonious and characterized by “we say/they say,” productive relationships can and do exist. There is an opportunity to direct the resources expended by both sides of the discussions regarding businesses' behaviour away from accusations and defences towards constructive conversations regarding credible metrics for businesses to account for their conduct.

The businesses we spoke with say they are prepared to have a discussion, facilitated by a third-party, with government and NGOs to establish a code of conduct that would not put Canadian companies at a competitive disadvantage and would be applicable to businesses and NGOs and seen as credible and consistent with internationally-recognized guidelines.

Any such code, they said, should address ethics, anti-corruption, the environment, human rights, labour relations and payments to foreign governments/communities.

GIVING HOST GOVERNMENTS THE TOOLS TO ENFORCE LAWS AND REGULATIONS

Many businesses said that the government's limited resources would have the most impact if they were used to assist foreign governments, when necessary, in enforcing their own laws and regulations. Business needs certainty, and that includes strict regulations in host countries that are enforced with regularity and predictability. The government, the companies suggested, should consider sending Canadian officials, businesspeople and NGOs to host countries to discuss responsible business practices, effective ways of consulting with local communities and their link to competitive advantage and profitability. The government should also organize and host meetings between officials from developing countries and Canadian business people, NGOs, financial institutions and stock exchanges to assist them in gaining an understanding of how businesses and investors make their decisions. Canada has a lot of expertise to offer host countries and the government can assist in facilitating its communication.

Canada's businesses want to work with the government and NGOs in building capacity in host countries. Businesses in Canada's oil, gas and mining sectors are watching the development of the Canadian International Institute for Extractive Industries and Development, announced by the Prime Minister in late October, with great interest. The Institute's objective is to provide expertise to countries wanting to build and/or improve their capacity to manage their natural resources and improve their economic growth.

RECOMMENDATIONS:

That the federal government:

- Strengthen its existing offices for overseeing businesses' international conduct, specifically the National Contact Point, before creating any new bureaucracies or considering legislative measures by:
 - looking to the United Kingdom's multi-stakeholder NCP regime as a model for Canada;
 - building accountability measures for all parties involved in the NCP process;
 - undertaking an effective communications program to create awareness of Canada's NCP in the business community.
- Organize and host meetings between officials from developing countries and Canadian business people, NGOs, financial institutions and stock exchanges to assist them in gaining an understanding of how our businesses and investors make their decisions. This would also assist in fulfilling one of the pillars of Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector to build host governments' capacity.
- Initiate a discussion, facilitated by a third-party, involving government, businesses, NGOs and other relevant stakeholders to examine whether or not additional offices/measures (for example an ombudsman or code of conduct) are needed. Should additional needs be identified, the discussion should include recommendations regarding the placement, mandate, accountability of and resources required by any additional offices and/or measures to ensure they would be regarded as effective and credible to all stakeholders involved.

A WORD FOR BUSINESS

In the intensity of operating a business in complex environments, companies agreed it is easy for them to lose sight of the importance of “explaining” themselves as openly as possible. Fortunately, technology allows companies to provide information regarding their operations relatively easily and inexpensively. Bombardier, for example, uses its corporate responsibility portal¹⁴ to provide an overview of its international operations and activities in the communities in which it operates.

As open as they may try to be, it is often not credible for companies to validate their own conduct. That is why third-party validation is always very important.

The UN Global Compact,¹⁵ a framework for businesses to develop, implement and disclose their human rights, labour, environment and anti-corruption policies and conduct is internationally recognized as credible. Yet very few Canadian companies are members, and Canada is one of the few developed countries without a UN Global Compact Network. Canadian businesses should consider establishing a Canadian Global Compact Network as a means of credibly and openly explaining their conduct, as well as disciplining themselves to do so. Without a widely-recognized accountability mechanism that is seen as credible, companies continue to run the risk of NGOs continuing to apply pressure on the government to step in and take potentially damaging measures.

The businesses and NGOs the Canadian Chamber spoke with agree that businesses can help themselves by:

- Being as open as possible
- Doing a better job of telling their stories; e.g., the contributions they make to the communities in which they operate including infrastructure, education and health care
- Better communicating that they do not drop their Canadian values at the border as well as the complexities of doing business in countries with governance regimes and norms very different from Canada's

- Being more demanding of host governments to enforce their laws and regulations (host countries do have laws and regulations that companies must adhere to, although they can be inconsistently enforced)

“... how much of this is just western people getting together and trying to decide what they think is best for others and how (much) is it exactly what the people who are directly impacted want and expect?”

– Business roundtable participant

One company represented at the roundtables said that transparency can be a very helpful tool in quashing inappropriate and/or illegal demands from foreign officials. As his firm's vice president responsible for transparency, he will stop the official's request cold just by meeting with him or her. He can also have the same impact by agreeing to the demand but saying his company's policy is to report all payments, etc. to government officials.

Many companies have mandatory employee training in responsible business conduct and, for those headquartered in the U.S., Foreign Corrupt Practices Act knowledge testing to prevent them from getting into difficulties in their international operations. All businesses with international operations should consider this type of training for their “on the ground” staff in foreign countries.

While many businesses say that responsible business conduct is fully-integrated into their operations, many companies still produce corporate social responsibility reports separately from their annual financial reports to shareholders. To demonstrate that responsible business conduct is truly integrated into their businesses, companies, where reporting structures permit, should consider integrating their CSR reports into their annual reports to shareholders. This could minimize the “PR” image associated with separate CSR reports.

¹⁴ www.bombardier.com/en/corporate/corporate-responsibility

¹⁵ www.unglobalcompact.org

THE BUSINESS ADVANTAGE OF CONSULTING WITH COMMUNITIES

In Canada and abroad there is a greater focus on consulting with communities affected by commercial projects. It is becoming clearer that seeking the participation and perspectives of communities is not only the *right* thing to do, but makes good business sense too. Businesses have much to gain from ensuring local communities are educated on their rights and have input into the design and scope of projects. Taking the time and making the effort to consult with communities during project planning, construction and operation can make ventures run more efficiently, resulting in cost savings, and prevent difficulties as well as accusations of inappropriate behaviour down the road.

That said, community engagement can be extremely difficult when companies take over operations previously owned by other firms and there are unresolved issues that local communities and NGOs want addressed before they will support any new activities. Community engagement is much easier to pursue in new operations as stakeholders can participate in the design of projects.

RECOMMENDATIONS:

That Canadian businesses:

- Establish a Canadian Global Compact Network as a means of credibly and openly explaining their conduct, as well as disciplining themselves to do so.
- Conduct Corruption of Foreign Public Officials Act training for their staff in foreign countries.
- When possible and appropriate, consider integrating their corporate responsibility reports into their annual financial reports to shareholders.
- Consult with communities affected by their projects.

IN CONCLUSION

Canada's businesses want a productive, progressive relationship with government and NGOs regarding their conduct at home and abroad.

If the federal government's objective is to provide businesses with clear and effective tools to ensure their conduct is appropriate and to create a path forward for resolving business conduct issues as well making things right when harm has been done, legislation is not the way to proceed. The only people further ahead will be lawyers rather than those whose rights and communities have been allegedly harmed.



SUMMARY OF RECOMMENDATIONS

That the federal government:

- Amend the Corruption of Foreign Public Officials Act to include a means for companies to seek an advance opinion on situations they believe could cause them to break the law and a voluntary disclosure process with alternate sanctions.
- Be more assertive in promoting the positive effects of Canadian companies' international operations, particularly in the extractive sector where Canada is a world leader and a major presence in the developing world.
- Choose one or two internationally-recognized guidelines on social responsibility and promote them with Canada's business community. The guidelines recommended are the OECD Guidelines for Multinational Enterprises and the International Finance Corporation's Performance Standards on Social and Environmental Sustainability, both of which are well known and apply across all business sectors.
- Adopt a more coordinated, whole-of-government approach to overseeing businesses' international conduct.
- Leverage the expertise and profile of Export Development Canada to communicate this Crown corporation's stringent social responsibility guidelines beyond those companies that deal with it directly.
- Strengthen its existing offices for overseeing businesses' international conduct, specifically the National Contact Point, before creating any new bureaucracies or considering legislative measures by:
 - looking to the United Kingdom's multi-stakeholder NCP regime as a model for Canada;
 - building accountability measures for all parties involved in the NCP process;
 - undertaking an effective communications program to create awareness of Canada's NCP in the business community.
- Organize and host meetings between officials from developing countries and Canadian business people, NGOs, financial institutions and stock exchanges to assist them in gaining an understanding of how our businesses and investors make their decisions. This would also assist in fulfilling one of the pillars of Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector to build host governments' capacity.
- Initiate a discussion, facilitated by a third-party, involving government, businesses, NGOs and other relevant stakeholders to examine whether or not additional offices/measures (for example an ombudsman or code of conduct) are needed. Should additional needs be identified, the discussion should include recommendations regarding the placement, mandate, accountability of and resources required by any additional offices and/or measures to ensure they would be regarded as effective and credible to all stakeholders involved.

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