



Presentation to

The House of Commons

**Standing Committee on Foreign Affairs and International
Development**

***Study on Bill C-300: An Act respecting Corporate
Accountability for the Activities of Mining, Oil or Gas in
Developing Countries***

Hon. Perrin Beatty

President and Chief Executive Officer

Canadian Chamber of Commerce

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Please check against delivery

Thank you, Mr. Chair. My name is Perrin Beatty and I am President and Chief Executive Officer of the Canadian Chamber of Commerce. With me this morning is Susanna Cluff-Clyburne, Director, Parliamentary Affairs.

La Chambre de commerce du Canada est l'organisme de gens d'affaires le plus représentatif du Canada. Grâce à notre réseau de plus de 325 chambres de commerce locales, nous parlons au nom de 175 000 entreprises de toutes tailles actives partout au pays.

La Chambre de commerce du Canada compte de nombreuses sociétés pétrolières, gazières et minières parmi ses membres.

Nos membres sont conscients de la responsabilité et de la valeur commerciale inhérentes à des opérations commerciales durables. Cela inclut, notamment, tenir compte de l'impact économique, social et environnemental dans l'exercice de leurs activités. Ils reconnaissent également qu'un seul mauvais joueur peut entacher la réputation de toutes les sociétés canadiennes actives dans un lieu ou un secteur particulier.

Businesses and governments worldwide have been working to meet the increasing social and environmental expectations of their operations at home and abroad. The result has been the establishment of internationally-accepted norms of which members are well aware.

In support of our members' efforts, the Canadian Chamber has provided considerable input into:

- the Business and Industry Advisory Committee's (BIAC) contribution to the Organization for Economic Cooperation and Development's (OECD) *Guidelines for Multi-National Enterprises*, and

- the International Chamber of Commerce's (ICC) work with the *United Nations Global Compact* and the United Nations Special Representative John Ruggie's investigation into human rights and transnational corporations.

The Canadian Chamber has also been an active player in Canada's contribution to the development of the *ISO 26000 Guidance on Social Responsibility*.

The Canadian Chamber of Commerce's long-standing policy on responsible business conduct has been that socially responsible behaviour should continue to be promoted and supported by the government. A process of working with companies before they run into problems and then continuing to work with them to solve any issues that arise ensures Canada and Canadian companies are seen as world leaders.

The Canadian Chamber of Commerce has been expressing our members' concerns with Bill C-300 to members of Parliament in writing or in person since it was tabled in February, so I am certain the members of the Committee are familiar with our position.

Building the Canadian Advantage is consistent with the view of the Canadian Chamber and its members in the extractive industries sector that Canada shows true leadership in working with companies to give them the tools to prevent themselves from getting into difficulties in developing countries and, even more importantly, to continue working with them to help remedy the situation and preserve Canada's reputation if they do. Cutting and running is not the answer. The government's strategy acknowledges the critical role of host regimes in developing countries and commits to providing additional resources to them through the Canadian International Development Agency (CIDA), Natural

Resources Canada, the Department of Foreign Affairs and International Trade (DFAIT) and international bodies such as the Extractive Industries Transparency Initiative (EITI).

As a former Secretary of State for External Affairs, I believe this is the right approach. For exactly the same reasons why we would object to foreign interference within Canada, sovereign nations would not appreciate Canadian officials conducting investigations of projects in their territories or our laws dictating which companies shall and shall not operate in their countries. Bill C-300, if passed, will negatively affect Canadian foreign policy.

The newly-appointed CSR Counsellor strikes a balance amongst stakeholders while maintaining the primacy of DFAIT's National Contact Point in promoting the OECD's Guidelines for Multinational Enterprises. While some have argued that the Counsellor will be able to conduct investigations only with the agreement of all parties, those who are realistic know that credible investigations would be impossible without the co-operation of not only the company in question but, equally importantly, the host government.

It is our understanding that any lack of co-operation by any party would be included in the Counsellor's annual report to Parliament and would, rightly, be criticized. This provision is an important incentive to assist in the investigation.

The role of the CSR Counsellor only significantly differs from the independent ombudsman recommended in the *Roundtables* report - and from what is proposed in Bill C-300 - in that it does not have the power to recommend that government resources be withdrawn from companies found to be behaving improperly. Again, this is the right approach. Our goal should not be to punish, but to ensure that all companies adhere to the highest possible standards.

Un des aspects malencontreux du projet de loi C-300 – qui pourrait hanter tout gouvernement forcé de l’administrer – consiste en ce qu’il pose un risque déraisonnable pour les finances et la réputation des sociétés du secteur extractif. Ce dernier est très exigeant en investissements, axé sur le long terme et généralement actif dans des régions très éloignées des pays développés et en voie de développement. Chaque projet, ou presque, aura ses adversaires, peu importe le sens des responsabilités dont fait preuve la société qui le dirige. Pratiquement tous les projets seront opposés par des gens qui croient que le processus d’extraction des ressources est inacceptable. C’est le cas ici au Canada et l’expérience est la même ailleurs dans le monde. Notons que les perspectives de ces détracteurs vont souvent à l’encontre de celles des collectivités qui profitent de ces projets.

Le projet de loi C-300 fournirait une voie unilatérale, entérinée par la loi, aux organismes dont la survie dépend de leur capacité à faire des allégations contre les sociétés du secteur extractif. Les plaintes fondées sur une idéologie plutôt que sur le rendement occasionneraient d’énormes coûts aux contribuables et aux entreprises.

The auditing function proposed for the Department of Foreign Affairs and International Trade (DFAIT) in Bill C-300 would tie up dollars and people the department desperately needs for other purposes. And one can only imagine the fallout resulting from one partner in a joint venture losing its Export Development Canada (EDC) financing. Lawyers will be the only ones to get richer as a result.

Will Canadian companies ever be able to do enough to satisfy critics who are opposed to their activities in principle? Likely not.

It is hard to see how they could, and yet they will face the spectre of having to constantly look over their shoulders to see who is, or could possibly be, launching an attack via the mechanism that Bill C-300 would institutionalize. Does this represent a competitive disadvantage? Definitely.

Will any Ministerial investigation satisfy the party that submitted the complaint? Probably not. As a former Cabinet Minister, I have to say that the loosely-defined investigation process outlined Bill C-300 concerns me. The government's strategy, on the other hand, outlines a well-defined five-stage process that includes initial assessment, informal mediation, fact-finding, access to formal mediation, and reporting.

In criminal law, we are scrupulous in adhering to the principle that people are innocent until proven guilty, and we take considerable care to ensure that peoples' good names are not recklessly damaged. However, under C-300 the damage to the company accused is done as soon as a complaint is submitted and publicized.

For those whose goal it is to prevent Canadian companies from being able to do business abroad – including our foreign competitors – there is a powerful incentive to make allegations. The publishing of a finding in the *Canada Gazette* several months after the fact that a complaint was frivolous and/or vexatious will be too late for the company's reputation and possibly the financial viability of the project in question. Such a finding will definitely not receive the publicity in Canada, let alone in a developing country, that the original accusation did. And the company may face years of unnecessary reputation rebuilding. In the meantime, their competition will be doing the business.

Talisman Energy is an example of the impact Bill C-300 would have. Its name is still associated with unfounded allegations of appalling human rights abuses in Sudan several years - and tens of millions of dollars in legal costs - after it has been exonerated by the courts.

And perhaps most tragically for the Sudanese citizens involved, all agree their circumstances did not improve when this highly-regarded, responsible Canadian company sold its stake in the project.

The fact is that the vast majority of Canadian extractive companies behave responsibly and are considered global corporate social responsibility leaders. Earlier this year Talisman Energy was named by Maclean's magazine and Jantzi Research as one of Canada's 50 Most Socially Responsible Corporations.

Another Canadian extractive sector company, Barrick Gold, was named to the Dow Jones Sustainability World Index (DJSI) in 2009 for the second consecutive year. The DJSI is one of the world's foremost indices of corporate sustainability practices and tracks long-term economic, environmental and social performance of 2,500 leading companies worldwide using objective benchmarks to identify the top 10 percent of performers.

It is important to acknowledge the sustainable benefits extractive companies bring to communities. Just as they do here in Canada, these companies create economic and social opportunities for the citizens in the countries in which they operate. They also significantly contribute to the host countries' gross domestic products, infrastructure, tax revenue, training and skills pool, as well as sustainable economic development. The positive economic impacts that these activities and investments have are often overlooked.

You have heard from Export Development Canada how Bill C-300 would affect its ability to enter into financing agreements with Canadian extractive companies. You have also heard how government interference in the investment decisions of the Canada Pension Plan Investment Board (CPPIB) would affect its mandate to operate at arm's length from government to maximize earnings for those Canadian employees and employers who contribute to it. It would also require amendments to CPPIB's governing legislation.

Some have asked how serious being cut off from EDC financing and/or Canada Pension Plan investment could be. After all, extractive companies are large with significant financial resources.

EDC financing and institutional investments like the Canada Pension Plan are essential financial resources to Canadian businesses, extractive and otherwise. The sanctions proposed in this bill could be very serious and potentially devastating for the companies and their Canadian and foreign employees, as well as for the projects in developing countries involved in the allegations. To be cut off from EDC financing and political risk insurance, as well as being blacklisted for Canada Pension Plan investment, would mean the canceling of projects and the cutting of jobs.

Faced with the uncertainty of being measured against undefined guidelines, many Canadian companies would simply not take the risk of pursuing new ventures in developing countries.

Bill C-300 would affect not only the large extractive companies, but also the dozens of smaller firms that serve them.

One of the greatest ironies is that, while we all express concerns about the takeover of Canadian companies and say that we would, instead, like to see our businesses buy foreign companies, by discriminating against Canadian businesses, this legislation would do the opposite.

Bill C-300 would deter Canadian companies from acquiring firms that are operating inappropriately in developing countries and bringing their operations up to international standards. Why would they do so when the prospect of penalties and reputation damage lay before them? And yet who would lose most would be the citizens of the developing countries who would have to settle for companies from countries with lower standards.

Canada's extractive sector companies are experiencing the economic downturn head-on. Their challenges have been exacerbated by having to live with uncertainty in the years since the release of the *Roundtables* report and concerns over the government's response.

Bill C-300 adds to the interminable uncertainty under which these companies have been working. Even after passage, there would more uncertainty while guidelines were being completed. This is a sector that plans in decades and requires as much certainty, consistency and clarity in policy and regulations as possible.

The Canadian Chamber believes that any Canadian company operating abroad must comply with high social responsibility standards. Our message to parliamentarians is that government should work with governments in developing countries and companies before problems arise to ensure Canada and Canadian companies are seen as world leaders. It is in all of our interests to see this as part of the Canadian brand.

Bill C-300 would result in an environment of minimal compliance rather than one in which competition motivates companies to attain best practices and better. And for companies that get into trouble because of a lack of experience or circumstances beyond their control, being cut off from government resources when they are alleged to have behaved badly does not demonstrate leadership. It leaves the situation unresolved, the allegedly injured parties no better – and potentially worse – off and the company in no position to take any measures to make things right if that is proven to be necessary. It also leaves the reputation of Canada, the Canadian government and one of our most important industries and economic contributors in tatters.

I don't quarrel for a moment with the motivation of the bill's author. He, like the rest of us, would like Canada and Canadian businesses to have the reputation of following the highest ethical standards in the world. And, like us, he would like to see Canadian companies succeed in the global economy.

And yet, ironically, Bill C-300 would push us in exactly the opposite direction by encouraging reckless and untrue allegations and by giving competitors with lower standards a weapon to use against Canadian companies.

Canadian businesses need support from the government in good times and even more in bad. They do not need more bureaucratic burdens, deterrents to invest and incentives to move their operations elsewhere.

The government's CSR strategy is barely seven months old and needs time to be fully implemented before it is judged to be deficient. Once it has had a fair chance to make itself felt, by all means, let's review it and decide whether we should make changes. But at least give it that chance before tinkering with it.

On the face of it, Bill C-300 is good politics. However, upon closer examination Bill C-300 cannot live up to its intentions as it lacks some important context that could do more to damage to the extractive sector than it intends.

Thank you very much. I would be happy to answer your questions.