



THE CANADIAN
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November 27, 2009

Kevin Sorenson, M.P.
Chair
Standing Committee on Foreign Affairs and International Development
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Mr. Sorenson,

Re: Bill C-300 – *Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act*

The Canadian Bar Association is a national association representing over 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include the improvement in the law and in the administration of justice. The CBA's National Environmental, Energy and Resources Law Section (CBA Section) includes government lawyers, lawyers acting for conservationists and those who represent resource developers. As such, the CBA Section represents a broad range of interests related to environmental law from every part of the country.

The CBA Section appreciates this opportunity to express its views about Bill C-300, *Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act*. The Bill would enact human rights and environmental standards for the mining, oil or gas activities of Canadian corporations in developing countries. It would provide a complaints mechanism and sanctions for companies found not to comply with those standards. While we recognize the underlying objectives of the Bill, we suggest that certain concerns be addressed before the Bill receives further consideration.

The Bill would impose serious obligations on Canadian companies in the extractive sector operating abroad, with severe consequences for any violation. However, the proposed legislation lacks detail about essential elements, and instead suggests that guidelines would be provided by federal Ministers within twelve months of passage. In the interim, this would create significant uncertainty for companies affected, and could negatively impact their operations especially given global economic fragility. We suggest that more detail is also required for a sound public policy debate.

As drafted, the measures in Bill C-300 could create an uneven playing field for Canadian companies. The Bill would apply to some Canadian companies, but not to foreign-controlled companies operating in Canada, or Canadian companies operating in countries not considered to be “developing” (i.e. ineligible for Canadian International Development Agency funding.) The Bill is also likely to disadvantage Canadian companies in the international marketplace. Changes like those proposed in the Bill would be best developed through international consensus and applied uniformly to all international competitors.

We note that the Bill proposes a third party complaint process that has proven problematic in other contexts.¹ Canadian citizens or residents, or any resident or citizen of a developing country in which mining, oil or gas activities have occurred or are occurring could make complaints. Complaints would then require examination by the Minister, unless the Minister determines that the request is frivolous, vexatious or in bad faith. It would be difficult for the Minister to dismiss a complaint without significant examination, and the nature of examination required would have serious resource implications and challenges.

On March 26, 2009, the federal Government announced *Building the Canadian Advantage: A Corporate Social Responsibility Strategy for the Canadian International Extractive Sector*, which also addresses the responsibilities of Canadian extractive sector companies operating abroad. Any differences or overlap between the Strategy and the Bill could create confusion. For example, the Bill would establish a duplicate process for dealing with complaints against Canadian companies operating abroad to that set out in the Strategy.

We appreciate the need for accountability on the part of Canadian companies when operating abroad in terms of compliance with local laws and international obligations having the force of law. We suggest that Bill C-300 be reconsidered, given the concerns we have outlined. Thank you for considering the views of the CBA Section.

Yours sincerely,

(Original signed by Gaylene Schellenberg for Jim Thistle)

Jim Thistle,
Chair
National Environmental, Energy and Resources Law Section

¹ As an example, see Canadian Human Rights Commission website, regarding challenges and changes made recently to its complaints procedures: http://www.chrc-ccdp.ca/about/icm_page1_gci-en.asp