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Canada's Office of the Extractive Sector Corporate Social Responsibility Counsellor

In response to a growing perception domestically that Canadian extractive industry companies overseas were involved in allegations of human rights abuses, social conflicts and environmental degradation, the Department of Foreign Affairs, Trade and Development Canada created, in 2009, the Canada's Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor, with Marketa D Evans as its Counsellor. The Office of the CSR Counsellor makes up one of the four pillars of the Canadian government's CSR strategy for the Canadian mining sector. The remaining three pillars were:

- support for host country resource governance capacity building;
- promotion of internationally recognised CSR guidelines; and
- support for the development of a Centre for Excellence in CSR.

The mandate of the Office of the CSR Counsellor (the 'Office') is to resolve conflict, such as social or environmental, between project-affected communities and Canadian mining, oil and gas companies outside of Canada, improving their competitiveness.

The Office has an advisory and a dispute resolution role. In its advisory role, it encourages the implementation of performance standards, dispute reduction and dispute prevention, by bringing people from different perspectives together to promote learning. In its dispute resolution role, it provides a venue for dialogue and constructive dispute resolution between Canadian mining, oil and gas companies and project-affected stakeholders outside of Canada. The role is to provide mediation services and not to adjudicate on the validity or strength of the claims made by the community or the company.

When the CSR Counsellor receives a request for review, it notifies the other party and provides them with a copy of the request. The CSR Counsellor then carries out an intake screening in order to determine that the request meets the criteria as set out in the

CSR Counsellor's legal mandate. Although designed not to be a significant hurdle for communities, there are a number of intake criteria that have to be met, the most critical being that the underlying dispute must be in relation to one of the endorsed performance guidelines:

- International Finance Corporation (IFC) Performance Standards;
- Voluntary Principles on Security and Human Rights;
- The Global Reporting Initiative; and
- OECD Guidelines for Multinational Enterprises.

If the community's complaint, called a 'Request', meets the criteria, the CSR Counsellor seeks to facilitate communications and build trust among the participants, before engaging the parties in a more structured dialogue later on.

The potential benefits of the Office to Canadian companies are noteworthy. Through voluntary dialogue with the broader community, Canadian companies may gain a significant insight into their interests, needs and concerns, which may lead to consensual and gradual change, possibly avoiding inconvenient regulation. In addition to knowledge-building, the Office may enhance practical access to non-judicial dispute management as a supplement or an alternative to the court system.

However, the initiative has not been immune to some concerns raised by different parties. Industry participants have been concerned that the request and some details about it are posted on the CSR Counsellor's website, often with the complainant remaining anonymous. Having such allegations published on a government of Canada website seems to lend them credibility, despite the CSR Counsellor's role not to adjudicate. Some NGOs have been critical, questioning the Office's effectiveness as it does not have the authority to compel companies to participate in the dialogue proposed. In fact, companies have declined to engage in dialogue in two of the four cases that the Office has closed to date.



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The first file that was not the result of the company pulling out of the process was the second request made to the CSR Counsellor's office against First Quantum Minerals Ltd, for environmental issues in Mauritania. The dispute was resolved after significant levels of exchange, informal dialogue and information sharing, where it became clear that information previously not accessed by the requesters addressed some of their concerns. The CSR Counsellor was complimentary of the company's approach and concluded that '[the CSR Counsellor's office] is not a first

resort mechanism. We encourage, as is best practice, the use of closer-to-the site grievance mechanisms in the first instance'.

The Office could potentially help the development of socially responsible Canadian investment overseas, however it is still very new in the context of such mechanisms – there have only been six requests since the office opened its doors: two in 2011, one in 2012, and three so far in 2013. The office has yet to be able to claim it has had an effect in practice, given the little number of requests for review and the outcomes of them.