CORPORATE SOCIAL RESPONSIBILITY IN THE CANADIAN EXTRACTIVE SECTOR

BILL C-300: WHAT WENT WRONG?

by

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Abstract

While the mining industry provides numerous benefits to the society, it also has negative impacts on communities. This thesis will discuss various voluntary policies employed by mining companies and the developmental attempts at legislative changes to enforce mandatory regulations. The primary focus will be on Corporate Social Responsibility (CSR), in particular Bill C-300, which required “Corporate Accountability for the Activities of Mining, Oil or Gas Corporations in Developing Countries”. The Bill had effective key points to ensure that Canadian extractive companies followed human rights and environmental practices while operating overseas. Although the Bill was defeated, it is believed to be critical with respect to CSR. Moreover, Dodd-Frank, the 2010 United States legislation with similar provisions of CSR, will be discussed. The differences in the two will be elaborated to determine why Bill C-300 was rejected and answer whether it would have succeeded had the provisions been drafted similarly to Dodd-Frank.
Acknowledgments

I would like to thank God for giving me the strength to be able to pursue my dreams and to believe in myself. I would like to thank my thesis supervisor, Professor Ian Lee, for his continued assistance and guidance during the course of this thesis. I dedicate this thesis to my grandfather, Chaudhary Khurshid Ahmed, a retired judge and lawyer who has always been a source of inspiration for me. I am grateful to my parents and to Izza, Anum, Daniyal and Uzair for their love and support throughout the year. I would also like to thank Omer for always believing in me and helping me every step of the way. Lastly, a special thank you to my friends, for the countless hours we spent together at the library. This thesis would not have been possible without you all.
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I. Introduction

(a) Corporate Social Responsibility

Canada, often defined as a “mining superpower”, is at the forefront of the mining industry, home to almost 75% of the world’s mining and exploration companies.1 At the same time, however, Canadian companies often make headlines, not for their mining prowess but rather for alleged human rights violations and environmental degradation. Most of these violations occur in the developing countries where these companies carry out their extractive activities.2 This thesis will assess whether human rights and environmental violations by Canadian extractive companies have proliferated and determine if there is a viable solution to this problem. Two potential reasons for corporate social responsibility (CSR) violations in mining that have been identified include inadequate CSR policies or the absence of an effective government regulatory framework. Corporate social responsibility emerged as a theoretical concept in the 1950s, and since then, has been criticized for its vagueness.3 Blowfield and Frynas correctly define it as an “umbrella term” used for various theories all of which have common factors.4 The commonality among most definitions are that companies are responsible for 1) their impact on society and environment, 2) the behaviour of others with whom they are conducting business, and 3) managing their relationship with society in general.5 Blowfield and Frynas are correct in their claim that companies are accountable for the impact of their relationship with contractors,

2 Ibid.
5 Ibid.
governments and third parties. Industry Canada notes that with respect to Canadian mining and extractive companies, mining operations are often located in places where the rule of law is inadequate, absent altogether, or where the applicability of international law may be limited. In 2006, the Canadian government described corporate social responsibility as,

An evolving concept that is generally understood to be the way firms integrate social, environmental and economic concerns in their values, culture, decision making strategy, and operations in a transparent and accountable manner, thereby establishing better practices within the firm, creating wealth and improving society.

This thesis will analyze the extent to which mining companies act in socially responsible ways in practice. If operations are being carried out in a transparent and accountable manner, then why are companies allegedly violating human rights or harming the environment not held liable for their actions? Recently, the World Bank’s International Finance Corporation (IFC) interpreted corporate social responsibility as, “the commitment of businesses to contribute to sustainable economic development by working with employees, their families, the local community and society at large to improve their lives in ways that are good for business and for development.”

The variety in definitions illustrates how there may not be one construction of what corporate social responsibility is, but rather, the concept is defined based on the interest group in question. Accordingly, every nation or organization tends to have their own version of the concept, which

6 Ibid.
is why it is critiqued as a vague concept, and this perhaps explains the difficulty in ascertaining what violations of corporate social responsibility look like in practice.

(b) Canadian Extractive Industry: An Overview

Historically, the mining industry has been known to take a “devil may-care” approach towards the impact of their extractive activities.10 Mining companies often operate in regions where there is a lack of social order and rule of law, and many companies stand accused of causing massive devastation in the process of using the developing world’s resources to achieve their purpose of becoming leaders in the mining world.11 However, with an increase in global awareness, it is evident that mining company’s practices have shifted to reflect their awareness of the growing importance and relevance of social responsibility.12

In general, mining is described as extracting valuable minerals from the earth13. Areas where these valuable minerals are found are considered highly rich countries for the purpose of mining. The mining industry normally comprises of two primary sectors: exploration and extraction. Exploration activities are usually carried out by smaller companies whereas extraction activities are normally undertaken by large multinational companies.14 This distinction is important as it has an impact on the way these companies relate to issues of corporate social responsibility. Exploration can be quite risky and although rewarding in the end, it can also be highly expensive. The rate of failure for exploration activities is often high and many smaller companies

11 Ibid.
12 Ibid.
do not always even have the funds to carry out such expensive operations.\textsuperscript{15} Thus, extractive operations make up more than three quarters of the total corporate social responsibility violations in comparison to exploration activities.\textsuperscript{16} Exploration operations do not always have as significant of an environmental impact because of their limited chances of success and the superficial nature of their activities.\textsuperscript{17} Thus, exploration companies are regarded as minor corporate social responsibility violators.\textsuperscript{18} In contrast, extractive activities involve physical extraction of minerals from the earth and this process can have detrimental effects on individuals residing within proximity of these mining sites.

Why are responsible mining practices relevant in a Canadian context? As mentioned above, mining companies often carry out their operations in the resource-rich developing world. The choice of developing nations as mining sites reflects the globalized nature of companies and a preference to mine in nations which lack strong governmental policies.\textsuperscript{19} Furthermore, it has been noted by Verma and Chauhan that these nations are often home to poor corporate social responsibility practices.\textsuperscript{20}

Internationally, Canada is a prominent leader in mining exploration, extraction and development. Toronto is the Canadian hub for mining finance and Vancouver is home to a large number of

\begin{footnotesize}
\begin{enumerate}
\item Movements and Footprints, \textit{supra} note 7 at 8.
\item \textit{Ibid.}
\item \textit{Ibid.}
\item \textit{Ibid.}
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\end{footnotesize}
Canadian mining and exploration companies form one of the most powerful and influential sectors of the Canadian economy, being responsible for 42 billion dollars of the Canadian gross domestic product and providing jobs for a large number of Canadians and foreigners who are employed by Canadian firms overseas.\(^{22}\) Canadian mining companies form almost three quarters of the world’s mining and exploration industry. In 2007, Canadian mining companies were responsible for more than 60 billion dollars’ worth of investment in developing countries.\(^{23}\) This helps establish the relevance of this thesis topic of exploring Canadian mining practices, as Canada is considered to be a world leader in this sector and should act in accordance with acceptable practices of CSR.

The Canadian mining sector is described as a non-renewable, natural resource sector and it is because many mining companies do not comply with guidelines for sustainable development that this is a topic worth exploring further.\(^{24}\) In a MiningWatch Canada Report on mining practices, it was found that there had been 171 incidents where international mining companies were involved in community conflict, human rights abuses, unlawful and unethical practices or environmental degradation.\(^{25}\) This highlights the relevance of this particular thesis topic and raises the concern of whether legislation is required to further regulate this industry’s practice.


\(^{22}\) Movements and Footprints, *supra note 7 at 3*.

\(^{23}\) *Ibid. at 1*.

\(^{24}\) Discussion Paper to Accompany Plenary Sessions, (2012), online: United Steelworkers, National Mining Conference, <https://docs.google.com/viewer?a=v&q=cache:f4UOr4FRVgI:www.usw.ca/admin/community/documents/files/discussion.pdf+Canadian+mining+sector+is+described+as+a+nonrenewable,+natural+resource+sector&hl=en&gl=ca&pid=bl&srcid=ADGEESjw_TZ5jrR7B3s6RK3AxSvNGVEi5d2YsRjSfGjzHVDZpAIgwbgpGyN_k7p0htamUaFOARFYh7aC11KFBxGe1mudeNFOAnqcfPtktcTG7XmTe4gkkDq4odosqPttPsv5mwr&sig=AHIEtbSrVOqejyESUR6LOnuOGvojG-NQ4Q>, at 3.

\(^{25}\) Movements and Footprints, *supra note 7*.
Through the study carried out by MiningWatch, Canada was found to be responsible for, on average, 33% of the violations, which is four times the number of violations committed by countries like India and Australia. In particular, gold, copper and coal mining were the sectors in which the greatest number of violations had been reported. This can be troublesome as Canada has over 75% of the world’s mining and exploration company headquarters. Canadian-owned mining companies have invested in almost every country in the world and thus, it is no surprise that these companies are more likely to be involved in incidents compared to companies from other countries around the world. It is for such reasons that the mining industry of Canada may need to be subjected to increased demands of accountability for its actions, more than any other industrial sector in the country. Accordingly, this thesis argues that current Canadian CSR policies may not be effective in practice in light of the existence and number of violations. Rather than dealing with issues of CSR in retrospect after violations, it is advisable to take a proactive preemptive approach.

The challenge that many of these mining companies face is that despite wanting to act in a responsible manner, they are unaware of the standard they are expected to follow to ensure sustainable development. What this really means is that there are no clear guidelines for responsible mining within Canada and it is difficult to expect the companies to follow standards they themselves are unaware of. This was the approach that many Canadian industry

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26 Ibid. at 9.
27 Ibid. at 7.
28 Ibid. at 10.
30 Ibid.
representatives took in the 2006 Roundtables where they argued that, “Canadians needed clarity on what is expected of the Canadian companies that are operating abroad.”\textsuperscript{31} Although Canadian companies operate in many developing countries around the globe, no uniform standard of rules exists within Canada. As a result, what is missing is an enforcement mechanism for Canadian mining companies when they operate at home or abroad. It is important to note that although there are guidelines currently in existence, the aim is to assess whether or not there is a need for a mandatory regulatory framework.

\textsuperscript{31} Ibid.
II. What steps have been taken in Canada to promote Corporate Social Responsibility?

(a) Background

In recent years, various allegations have been made against many of Canada’s leading extractive companies. The Marlin Mine case is one such example which raises the issue of whether regulatory standards are perhaps inadequate by those who are affected by these mining operations.\(^{32}\) Marlin Mine is located in the north-western part of Guatemala and is owned by a subsidiary of Goldcorp Inc. Established in 2004, the mine’s practices have been subject to environmental and human rights concerns.\(^{33}\) Evidence of the concern includes explosions that take place resulting in damage to infrastructure.\(^{34}\)

Ivanoff and Broughton claim that anyone who has taken the courage to speak up against the activities taking place at Marlin Mine have either been punished for doing so; in some cases, they have even been counter-accused of criminality. For example, according to MiningWatch Canada, in 2010, a female activist who had voiced her concern was shot to death by two men.\(^{35}\) The Canadian Network on Corporate Accountability stated that in March 2011, those who had protested against the damage that the mine had caused were robbed and beaten, leaving a large number of people severely injured.\(^{36}\) The CEO of Goldcorp assured the citizens that they would look into the matter, stating that the mine was committed to the highest level of human rights


\(^{33}\) Ibid.

\(^{34}\) Ibid.


However, according to the Guatemalan Government, no order was made to suspend the mine and as of 2011, it is still in operation. This example raises the question of whether stronger legislation or legislation specifically related to CSR in the mining industry could have a positive impact on corporate practices. Human Rights Watch notes that Barrick Gold, the world’s largest gold producer, has been allegedly accused of human rights abuses. This organization confirmed allegations that security guards that were employed at the mine in Papua New Guinea owned by Barrick Gold had gang raped women from the local area. Allegedly, these women were beaten up, raped and forced to commit inhumane acts. It was further found that the police at the same mine were responsible for destroying at least 130 buildings, leaving innocent people homeless. Amnesty International noted that although Barrick Gold initially denied these allegations, the company had to accept these findings after the public release of this information. These alleged occurrences lend salience to the issue of CSR in the mining industry and support the argument that clear legislation may offer a solution to the problem of vague regulatory requirements.

The challenges of sustainable development faced by the Canadian mining industry in international operations are not unique. There is currently an ongoing debate concerning the

37 Ivanoff & Broughton, supra note 32.
38 Ibid.
41 Ibid.
42 Mychalejko, supra note 39.
responsibility that home countries have for the overseas activities that their international companies carry out. A home country is where a multinational company incorporates, and where it raises the capital that it needs for its projects. Within Canada, the debate concerns whether the federal government should take legislative action to further regulate CSR practices in the mining industry. It is argued in this thesis that the Canadian government should take legislative action to further CSR principles in mining practices. It is suggested that the Canadian regulatory framework which oversees the operations undertaken by Canadian extractive companies is ineffective. Legislative provisions that do exist are limited in their scope and the corporate social responsibility policy that exists has not had a positive impact on the extractive sector. Furthermore, it is asserted that remedies for victims are currently insufficient in addressing the complaints of victims.

It is believed that extractive companies make a major contribution to Canada and companies that are regarded as socially responsible are more likely to conduct business with governments which can be held accountable to their citizens. Furthermore, companies may undertake initiatives such as voluntary activities in order to operate in a manner which is considered environmentally, socially and economically acceptable. Although extractive companies have been recognized domestically and internationally for how they are handling issues of corporate social responsibility, this thesis looks into whether government should further regulate the CSR

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45 Ibid.
46 Ibid
47 Ibid.
practises of this sector. This topic is worth exploring as it has been noted that Canadian mining companies have a poor record of support for corporate social responsibility guidelines despite the many efforts by the Canadian government to promote responsible practices.⁴⁹

(b) Domestic and International Initiatives

In recent years, the increasing seriousness of the problems concerning the international operations of the Canadian mining sector has led to increased attention towards policy and legislative reform. There have been various initiatives taken within Canada in favour of holding mining companies responsible for their CSR practises. This movement was initiated by the members of the Parliamentary Standing Committee on Foreign Affairs and International Trade in 2005 who, after hearing submissions from representatives of the communities affected by the Canadian mining operations, came to the conclusion that, “Canada does not yet have laws to ensure that the activities of Canadian mining companies in developing countries conform to human rights standards, including the rights of workers and indigenous people.” ⁵⁰

The result was that significant policy and law reform was called for in Canada in order to address the perceived CSR issue and fill in the gaps in holding Canadian mining companies responsible where such violations were proven.⁵¹ The Canadian Government carried out a series of roundtables with a special focus on the issue of corporate social responsibility in the extractive sector. As a result of these roundtables, the advisory group released a report that contained 17 recommendations.⁵² It was thought that the implementation of these recommendations would

⁴⁹ Keenan, supra note 44.
⁵⁰ Ibid. at 31.
⁵¹ Ibid.
⁵² Drohan, supra note 1 at 2.
promote CSR in mining.\textsuperscript{53} These recommendations included initiatives which the advisory group believed would cater to the problems inherent in mining activities and as a result would have a positive impact on the extractive sector as a whole. The government was to respond to these recommendations in hope of creating the much needed policy change. It was after two years of the advisory group recommendations that the Conservative government in office at the time issued a response. Although the government largely glossed over the advisory group’s recommendations, this thesis takes the position that perhaps the recommendations should have been given more attention. The response issued by the government focused primarily on the issue of accountability in the countries where Canadian mining companies invest.\textsuperscript{54} Keenan argues that this response was overdue and possibly not worth the wait.\textsuperscript{55} It was after this response that Stockwell Day, the Minister of International Trade, presented what was named “Building the Canadian Advantage: A Corporate Social Responsible (CSR) Strategy for the Canadian International Extractive Sector.”\textsuperscript{56} The government believed that this Strategy would improve the competitive advantage of the Canadian extractive sector as well as ensuring the highest standards of social and environmental protection.\textsuperscript{57} However, looking at the recommendations made by the advisory group which included encouraging, “corporate compliance with performance standards” it seemed that the government strategy lacked this major component.\textsuperscript{58} Looking at the different initiatives this strategy recommended will help in understanding why it was not seen to parallel the intent of the advisory group recommendations.

\textsuperscript{53} Keenan, supra note 44.
\textsuperscript{54} Ibid. at 34.
\textsuperscript{55} Ibid.
\textsuperscript{56} Ibid.
\textsuperscript{57} Ibid.
\textsuperscript{58} Ibid.
The Global Reporting Initiative (GRI) was one of the three guidelines that were promoted by this Strategy. Its purpose was to act as an accepted framework by which companies would report on social, economic and environmental practices. While it covered a variety of corporate social responsibility issues and a format which had general acceptance all around the globe, its focus was on how companies could report their practices in a better way rather than on how companies could improve the practices themselves. Although useful, this was not seen as the solution that was needed. What was largely absent was direction for companies on how they could better practice sustainable development. It is argued that giving them initiatives on how to report problems would not specifically solve the issue. Furthermore, although the government did establish a Corporate Social Responsibility Counsellor to encourage dialogue between companies and the affected parties, participation was to be entirely voluntary and there were no consequences for failing to participate. The weaknesses of the Counsellor will be discussed in further detail in the following section.

Furthermore, in 2009, the Canadian government created the Office of the Extractive Sector Counsellor within the Department of Foreign Affairs and International Trade (DFIT). The mandate of the office was to increase corporate social responsibility performance by attempting to reduce the negative impact that mining projects had on the community where they were being

60 Ibid.
61 Ibid.
62 Ibid.
64 Ivanoff & Broughton supra note 32 at 2.
carried out. It was to act as an impartial body in cases of conflict and to act as a mediator to be able to resolve the issues that parties were seeking to address. It was assumed that its success would be its ability to resolve issues in the years to come. However, until 2011, there had been no complaints which the Office had addressed. With a lack of complaints to address, the effectiveness of this program has yet to be seen. One of the main problems identified by this Office was that in order for it to address an issue, both parties involved had to consent to it. Thus, being a voluntary process, it was unlikely that it would be able to address difficult concerns where one of the parties was unwilling to let the Office get involved. Not being able to make recommendations which have a binding effect on the parties involved means that the Office suffers from the same disadvantage as other voluntary mechanisms and this is why some human rights groups have even gone to the extent of calling this initiative “toothless”.

The above initiatives discussed are efforts that had been made by the Canadian government to address the problem of corporate social responsibility. Attempts have been made at an international level as well to promote sustainable mining around the globe. The Extractive Industries Transparency Initiative (EITI) is a coalition of governments, industries, investors, and international and non-governmental agencies which support improved governance in resource-rich countries through the publication and verification of company payments and government

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65 Ibid.
66 Ibid.
67 Ibid.
68 Ibid.
69 Ibid.
revenues for oil, gas and mining industries.\textsuperscript{71} The second initiative is the creation of Publish What You Pay, a civil society organization which helps citizens in holding governments accountable for the revenue that is made from the extractive industries.\textsuperscript{72} This organization helps in providing a medium for potential victims to voice their concerns through a public forum. If companies are disclosing the amount they pay and the government is disclosing the amount they receive, then citizens are able to compare the two and hold leaders accountable where necessary with respect to issues of corruption. Although both initiatives had the same aim- to make the mining industry accountable for their actions- both had different ways of achieving them.\textsuperscript{73} The EITI is voluntary in nature and cannot enforce the regulations on any individual country.\textsuperscript{74} On the other hand, Publish What You Pay uses a mandatory approach in forcing companies to disclose payments to governments.\textsuperscript{75} It should be mentioned that the EITI has only been endorsed by two Canadian mining companies and although the Canadian government does support the EITI, it is not one of the ten countries that are compliant with it.\textsuperscript{76} Thus, just the existence of such initiatives is not the solution but rather, compliance to the idea that they promote is required. Along with these two mechanisms, there are also several others that have been introduced at the international level which seek to address the issues occurring in the mining industry.


\textsuperscript{72} Ivanoff & Broughton supra note 32 at 8.

\textsuperscript{73} Ibid.

\textsuperscript{74} Ibid.

\textsuperscript{75} Ibid.

\textsuperscript{76} Ibid. at 9.
The Organization of Economic Co-operation and Development (OECD) Guidelines are voluntary guidelines that have been developed to ensure that multinational companies that operate in foreign countries take into account issues of human rights and the environment. One of the main strengths of these Guidelines is that they are applicable both in the host countries as well as the countries where a company is carrying out its activities. Countries that are signatories to the OECD Guidelines have National Contact Points, which are offices tasked with ensuring that the Guidelines are followed. Anyone who has concerns that the Guidelines are not being followed or about particular incidents can bring it to the attention of the office which will then take action against it. While this sounds like a process which could be highly effective, their success in practice is uncertain, since the Guidelines are in fact only normative, providing recommendations on what to do but not stating how these recommendations are in fact to be implemented or incorporated into the company itself. Furthermore, the Voluntary Principles on Human Rights and Security was developed in 2000 and is the only framework that provides guidance specifically on issues of human rights. Despite being described as credible because of the multi-stakeholder involvement, the principles are voluntary and thus, companies cannot be held accountable if they are violated. Although these principles were one of the three guidelines that the Canadian government promoted in their “CSR Strategy for the Canadian International Extractive Sector”, the principles do not have formal acceptance from the Canadian mining industry. There was also a recommendation made for the founding of a Corporate Framework.

77 CSR Framework, supra note 59.
78 Ivanoff & Broughton, supra note 32.
79 Ibid.
80 Ibid.
81 CSR Framework, supra note 32.
82 Ibid.
83 Movements and Footprints, supra note 7 at 13.
Social Responsibility Centre of Excellence supported by the Canadian Institute of Mining, as well as the creation of a CSR framework specific to the sector including accountability mechanisms. Meeting are being held across the country in order to determine the scope, mandate, and level of commitment for this proposed Centre. However, this framework failed to include a legally binding regulation for Canadian companies or to open a door for the non-nationals in Canada who were affected by these mining companies. This supports the argument that more than international voluntary mechanisms are needed to solve the existing problems in the mining industry.

The above illustration shows that various organizations had been created to try to resolve the issue at an international level. With respect to environmental and human rights violations, advocacy agencies have strongly influenced the visibility of these issues internationally. How will victims have access to justice? Since initiatives are voluntary in nature, they cannot be enforced against anyone. As this voluntary versus mandatory dilemma will be discussed further in this thesis, it will become clear that although these initiatives are a step in the right direction, they may not be the most effective way of addressing complaints. The purpose of discussing all these concepts is to illustrate how the current situation of corporate social responsibility in Canada may benefit from the guidance that legislation could clarify. After the advisory group recommendations were released, the Conservative Government did not present any such legislation and it was during the two year period of waiting for the Government to respond to the these recommendations itself that then Liberal Party Leader MP John McKay put forth a private

84 Building the Canadian Advantage, supra note 48.
85 Keenan, supra note 44 at 33.
87 Ibid.
member’s bill, Bill C-300, a codification of a number of the advisory group’s recommendations. 88

88 Keenan, supra note 44 at 34.
III. Bill C-300: A solution to existing problems?

Writing for The Star, Graham Denyer Willis stated that “Canada’s image may be dirty, but it isn’t stained”.\(^{89}\) Canadian companies may have had to deal with allegations of social responsibility violations, but one cannot deny that despite such allegations, Canada is still an important leader in the sector. This part of the thesis will focus on Bill C-300 and examine the various drawbacks of the bill because of which it failed to become a mandatory piece of legislation. Before looking at the bill, it is worthwhile to address how other countries and international players have addressed the perceived issue concerning the need to further regulate CSR practices in mining. The United States passed the Foreign Corrupt Practices Act in 1997 with the purpose of banning the payment of bribery moneys by United States companies that were carrying out their respective business abroad.\(^{90}\) This piece of legislation can be compared to the Corruption of Foreign Public Officials Act of 1998 passed in Canada, and the fact that although such an act exists, it is not well known and hardly even used.\(^{91}\) In both Norway and Britain, officials are enforcing guidelines laid down by the OECD for the conduct of their multinationals. Recently, in Norway, investigators were hired to look into a complaint about a proposed nickel mine in the Philippines.\(^{92}\)

On the other hand, Canada has always been less aggressive in dealing with such issues of corporate social responsibility. In 2009, during a policy statement, the then Trade Minister


\(^{90}\) Canadian Network on Corporate Accountability, supra note 70.

\(^{91}\) Ibid.

\(^{92}\) Ibid.
Stockwell Day said that the aim of the government was to focus on promoting the internationally recognized guidelines for corporate social responsibility. The purpose of discussing these matters is to highlight the importance of the need for a stronger regulatory framework to provide mining companies with clearer guidelines prescribed by law. John McKay hoped that Bill C-300 would fill the perceived gap that exists in the policy governing the Canadian extractive industries. In presenting this bill, he anticipated that Canada would follow in the footsteps of other countries and also introduce policies which require disclosure for extractive industries. Unfortunately, there was significant opposition to the bill, centered on the belief that it would have the negative effect of preventing Canada from raising the environmental and community standards in various important sectors. Defeated by a very narrow margin vote of 140 to 134, Bill C-300 might not have become law but this close competition shows that there were many who thought that the bill was the solution and believed that it would help tame the non-compliant mining companies.

(a) The Need for Bill C-300

Bill C-300 was introduced in an effort to improve CSR accountability in the mining industry. Supreme Court Justice Ian Binnie argued that the law needed to be changed so that individuals could sue companies in Canadian courts for alleged violations of human rights that occurred abroad. In light of the American Alien Tort Claims Act, Bill C-300 had a similar objective.

93 Ibid.
94 Ibid.
96 Drohan, supra note 1 at 3.
Binnie felt that “opening this door to legal redress could well have a statutory effect on the conduct of irresponsible corporations that are currently able to act with impunity”. In an effort to remedy perceived CSR issues within the mining industry, Bill C-300 was a private members bill introduced in 2009. Its purpose was set out in Section 3 which stated:

The purpose of this Act is to ensure that corporations engaged in mining, oil or gas activities and receiving support from the Government of Canada act in a manner consistent with international environmental best practices and with Canada’s commitment to international human rights standards.

The purpose of this bill was limited to oil, gas and mining activities that were carried out by the Canadian extractive companies in developing countries, and to cater to the increasing demands for corporate accountability. According to the bill, “mining, oil and gas activities” were defined under Section 2 as:

The exploration and drilling for, and the production, conservation, processing or transportation of, mineral resources, oil or gas in the territory of a developing country or on the high seas where such activities are controlled directly or indirectly by a Canadian corporation.

Thus, the bill was to regulate those Canadian extractive companies operating in developing countries which received investment support from government entities. Had it been successful as law, it would have operated by creating environmental guidelines and those guidelines would have had to be met in order for a company to receive financial support from the government.

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97 Ibid.
98 Ibid.
100 Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act, 2009, House of Commons of Canada, s 3.
101 Ibid. s 2.
The bill detailed a complaint mechanism by which anyone, despite their nationality, could submit a complaint against the operations of any particular Canadian extractive company. Complaints were then to be investigated and public reports to be issued regarding corporate compliance with these guidelines. These investigations were to be carried out as a matter of course and there was no requirement that the company had to provide consent for the investigation to be carried out. Companies that did not comply would not be eligible for support from the Canadian federal government.

(b) Weaknesses of Bill C-300

Bill C-300 has generated a large amount of public debate along with strong opposition from the Canadian mining sector. Not only was there criticism within Canada, but the Bill received international criticism as well. Gordon Peeling, the President as well as the CEO of the Mining Association of Canada, felt that there already existed a number of international guidelines which Canadian mining companies could look to for standards of corporate social responsibility policies and that there was no need of such a bill at all. Peeling was of the opinion that the international standards were enough to hold the Canadian companies accountable and that enacting a bill specifically to deal with the issue was not particularly needed. Similarly, the director of government relations for Kinross Gold Corp, a prominent mining company, stated in his testimony that mining companies were already operating under high levels of scrutiny both in

103 Ibid.
104 Ibid.
105 Ibid.
106 Ibid.
108 Ibid.
the developed and in the developing world.\(^{109}\) The general consensus among leading mining companies remained that the purposes for which this bill was being enacted were already being fulfilled through international standards and regulations. However, on the other hand, there also remains the argument that international regulations may not be enough to solve the perceived problem of CSR violations by Canadian mining companies. As the Director of the Committee in Solidarity with the People of El Salvador (CISPES), Alexis Stoumbelis critiqued the bill on the basis that it was not useful as it did not do anything to resolve the unjust political and economic system whereby stronger nations were able to exploit weaker developing countries, their people as well as their resources.\(^{110}\) Stoumbelis believes that the prevailing view, reflected in the current balance of power, among mining corporations is that the right of a company to make profit through their activities is greater than the right of a community to have a safe environment to live in and making stricter regulations will not resolve the root problem itself.\(^{111}\) What becomes apparent is that the currently ongoing debate on the regulation of the mining industry by means of legislation has not yet come to a consensus on the best way for Canadian legislators to proceed.

**(i) Economic Weaknesses**

The potential economic impact of the proposed legislative changes draws attention to one reason why Bill C-300 failed to pass. Critics of the bill believed that it would have had a significant and adverse economic impact on the Canadian mining industry. Had Bill C-300 been successfully passed, they argue, Canadian companies would be put at a disadvantage in the market compared

\(^{110}\) Mychalejko, *supra* note 39.  
\(^{111}\) *Ibid.*
to their international competitors. According to the wording of the bill, the guidelines would not have been applicable either to foreign controlled companies operating in Canada or to those companies which are Canadian but operating in countries that do not come under the label of developing countries. It was believed that the bill created risks, costs and uncertainties which are in fact unique only to Canadian extractive companies and that this might have affected their competitiveness on an international scale. The largest Canadian extractive companies likely perceived themselves to have been the most keenly disadvantaged as their foreign competitors would not be subject to the same rules. There are three main reasons for why this may be so.

Firstly, the sanctions proposed by the bill are withdrawal of financing from organizations which include Export Development Canada (EDC) and divestment from the Canada Pension Plan (CPP). Although these sanctions have been described as being mild, their severity and impact may in fact have been under-estimated. Created to provide trade finances to support Canadian exporters and investors, Export Development Canada (EDC), an arm’s length government agency, operates on commercial principles. It conducts its business in a manner that respects all applicable international agreements of which Canada is a member. This ensures that Export Development Canada consistently fulfills its corporate social responsibility commitments and

113 Ibid.
114 Ibid.
115 Ibid.
116 Ibid.
guarantees the sound financial management of its activities. In relation to mining, EDC’s mining related business exceeded $9 billion and represented 13% of its total business in 2007. By 2008, it had surpassed previous years and had almost $14 billion worth of business. These statistics show how important mining is to both Canada as well as EDC. According to Bill C-300, if a company was found to be non-compliant of the CSR guidelines, EDC would withdraw all its support for the project. Critics of the bill are of the view that since companies look for certainty with regard to funding and insurance, the sanctions of the bill will result in companies seeking support from financial institutions other than the EDC which will indirectly prove to be a source of embarrassment for the government as EDC provides pressure on the mining companies to use Canadian suppliers for services and goods. Jim McArdle, Senior Vice-President, Legal Services & Secretary of EDC addressed the Standing Committee on Foreign Affairs and International Development in 2008, where he discussed the effect that Bill C-300 would have on the activities of the EDC. According to him, Bill C-300 would put Canadian companies at a disadvantage compared to exporters from other countries and would hinder EDC’s ability to support Canadian companies. EDC was not against the intent of the bill but supported a different approach. It believed that the best way to promote human rights and ethical conduct as well as to improve environmental conditions related to projects around the world was to

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118 Yolanda Banks Export Development Canada (EDC) Financial Services – Corporate Social Responsibility Requirements, (2009), online: Presented to Canada-South Africa Chamber of Business and Mine Africa Seminar
119 Ibid.
120 Ibid.
121 Ibid.
122 Ibid.
124 Ibid.
collaborate with the companies to help and guide them to operate responsibly. According to the bill, the minute it was established that the company had breached the guidelines, EDC would have to terminate the loan they had provided to the mining company, even if this meant the breach of a contract. What this means is that EDC would not have the option to help the mining company remedy their wrong in anyway. It was not possible, in such situations, for the company and EDC to subsequently maintain their contract.

In 2008, EDC supported approximately $27.4 billion of exports and investments in the extractive sector and this ability to provide lending and insurance would have seriously been compromised if Bill C-300 had become law. EDC helps Canada to be a leader on CSR without being a disadvantage to Canadian companies and thus, EDC believes that including them in Bill C-300 would only hurt Canadian companies and “take them out of the game.”

The Canadian Pension Plan is considered to be one of Canada’s most important social programs and aims to strengthen responsible development. In fulfilling that mandate, the Canadian Pension Plan Investment Board (CPPIB) developed a Policy on Responsible Investing which focuses on how environmental, social and governance factors (ESG) are to be integrated when investments are made, in particular by the Canadian extractive companies. The CPPIB argues that that their mandate is parallel to the intent of Bill C-300 and therefore their inclusion into Bill C-300

Ibid.
Ibid.
Ibid.
Ibid.

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is unnecessary. Furthermore, they argue that according to the bill, government ministers can direct investment decisions at the CPPIB which runs counter to the existing public policy intent of the CPP. Also, because of the provisions of the CPP Act, the bill would be legally ineffective without the required consent of the provincial governments. Therefore, the CPPIB believe that if Bill C-300 is to pass as law, it should be amended to remove the direction to the CPP Investment Board.

Secondly, Canadian extractive companies feel to be at a disadvantage because these rules would make it difficult for a Canadian company to be able to acquire a company which may not be operating on the same levels of corporate social responsibility. It is not the acquisition itself that would be the disadvantage. Rather, as soon as the smaller company is acquired and found to be in violation of the bill, the sanction of financial withdrawal would be applicable which would prove to be disadvantageous for the Canadian company which had acquired it. To avoid this penalty, such acquisitions would not be made, which is a competitive disadvantage in itself.

Lastly, there is an existing element of trust in the Canadian industry between the host countries and local communities which rely upon mutual respect regarding their respective legal systems and social and environmental standards. If the Bill C-300 was implemented as law, there would be a potential harm to the relationship between Canadian companies and the governments of the countries in which they carry out their activities.

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130 Ibid.
131 Ibid.
132 Barrick, Kinross & Goldcorp, supra note 112 at 9.
133 Ibid.
134 Ibid.
135 Ibid. at 9.
Critics of the bill argue that yet another weakness of the bill is the adverse effect it will have on the Canadian economy. Had Bill C-300 been in place as law today, it would have provided a strong incentive for multinational mining companies to relocate outside Canada to completely avoid the EDC as a source of financing and thus, avoid the sanction altogether, resulting in a severely negative impact on the Canadian economy.\textsuperscript{136} The purpose of the bill was to maintain accountability for Canadian mining companies and to hold them accountable for human rights and environmental violations. However, if these same companies relocate outside Canada to avoid this accountability and the attached sanctions, it raises the concern that the bill, as it was drafted, may not have been best suited for Canada. Consequently, it may reverse its intended effect by restricting access to credit for the Canadian companies and thereby forcing them out of the market altogether.\textsuperscript{137} The weakness of the bill lay in the fact that although it aimed to regulate the mining industry, it also had potential to drive these same companies out of the market. The purpose of introducing an accountability law was to ensure that companies carried out their activities in a socially responsible manner, not to force these companies to look at alternatives so as to avoid the application of the bill altogether. Thus, although a number of stakeholders supported the aim of the bill, these economic concerns prevented it from becoming law.

(ii) Fairness

Bill C-300 was also challenged on issues regarding fairness. The most important of these was that it was extra-territorial in nature as it is not clear whether such a law is permissible and can be passed.\textsuperscript{138} Under Canadian law, in order for a Canadian court to be able to exercise

\textsuperscript{136} Ibid. at 8.
\textsuperscript{137} Bourassa, supra note 21.
\textsuperscript{138} Janda, supra note 99, at 6.
jurisdiction over activities carried out in a foreign jurisdiction, it is necessary for there to be a “real and substantial” link between Canada and the activities under question.\textsuperscript{139} On careful attention on the wording of the Bill, the only real link can be established when the party affected has received support from the Canadian government. Whether this satisfies the requirement of being “real and substantial” will remain doubtful.

Besides the extra-territorial concern, being a Private Member’s bill, Bill C-300 could not completely implement the Advisory Group’s recommended Ombudsman.\textsuperscript{140} This is noteworthy because of the differences between legislation that would appropriate public funds and legislation that puts certain limits on the use of public funds. This is covered by Sections 53-57 of the Constitution Act, 1867 which requires legislation appropriating public funds to have been initiated in the House of Commons.\textsuperscript{141} Further, according to Section 54, it must be “Recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.”\textsuperscript{142} The restriction on the scope of a Private Member’s bill can be understood by the following:

There is a constitutional requirement that bills proposing the expenditure of public funds must be accompanied by a royal recommendation, which can be obtained only by the government and introduced by a Minister. Since a Minister cannot propose items of Private Members' Business, a private Members' bill should therefore not contain provisions for the spending of funds. However, since 1994, a Private Member may introduce a public bill containing provisions requiring the expenditure of public funds provided that a royal recommendation is obtained by a Minister.

\textsuperscript{139} Ibid.
\textsuperscript{140} Ibid. \textit{at 3.}
\textsuperscript{141} Constitution Act, 1867 (UK), reprinted in RSC 1985, c 3, s 53-57.
\textsuperscript{142} Ibid.
before the bill is read a third time and passed. Before 1994, the royal recommendation had to accompany the bill at the time of its introduction.  

This principle can be used in relation to Bill C-300. If the bill had proposed that there was to be a creation of an Ombudsman office, there would have been the need for expenditure of public funds which requires a royal recommendation. However, the bill suggested no new expenditures or taxes and its motive remained confined to appropriating existing funds. In March 2009, a month after the Bill C-300 had been introduced, the federal government introduced its own strategy of corporate social responsibility in the extractive sector. As already mentioned above, this was seen as a counterpart to the Bill C-300. Particularly, there was to be set up a Counsellor to the extractive sector for corporate social responsibility. One of the differences between the job of the Counsellor and the working of the bill was that unlike the latter, the Counsellor could only carry out a review with the written consent of the parties that were involved. Furthermore, there were no formal consequences for the violation of the guidelines and the only action taken was to provide advice to the stakeholders involved. One of the arguments put forward regarding this counterpart to the Bill C-300 was that “the creation of the Counsellor’s office was used as a Trojan horse against Bill C-300.” The argument made was that it was

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premature to proceed with Bill C-300 until the Counsellor’s office had been given an opportunity to prove itself.\(^{148}\)

It is noteworthy to point out that the vagueness of the standards to be incorporated into the guidelines is one of the other shortcomings of the proposed Bill C-300. The bill does not seem to provide any guidance on how the Ministers are supposed to carry out the investigations and there seems to be a lack of safeguards to ensure a fair hearing.\(^{149}\) It is believed that Bill C-300 might be responsible for the unnecessary harm that Canadian extractive companies suffer as a result of the bill. There are limited procedural safeguards in the bill and even those that exist are not properly defined. In the absence of procedural protections, the sanctions attached could result in being potentially dangerous to the Canadian companies working abroad.\(^{150}\) These various aspects may have been neglected in the drafting of the bill which perhaps leads to the conclusion that instead of being advantageous for the companies, it might have an effect which is the quite the opposite.

Moreover, Bill C-300 adopts an overly simplistic approach to corporate social responsibility and in doing so, undermines the collaborative process. There are two aspects to this. Firstly, many leading companies believe that a collaborative approach ensuring benchmarking in corporate social responsibility practices is the right step towards achieving the corporate social responsibility goals of this industry.\(^{151}\) It seems reasonable to find a solution to the problem

\(^{148}\) Ibid.
\(^{149}\) Ibid. at 5.

**Note:** Summary of Frank Iacobucci Memorandum Respecting Bill C-300
The original memorandum prepared by former Supreme Court Justice Frank Iacobucci was prepared for Barrick Gold Corporation, Goldcorp Inc. and IAMGOLD on 1 September 2010 [Iacobucci Memorandum Summary]

\(^{150}\) Barrick, Kinross & Goldcorp, supra note 112 at 10.
\(^{151}\) Ibid. at 13.
rather than just putting blame on companies. Furthermore, it is argued that the bill would have
likely had drawn more support if mining companies were consulted in the drafting process. Companies such as Gold Corp, Kinross and Barrick Gold believe that this being a bill concerning their activities, they should have at-least been consulted, which is why many extractive companies stand in opposition to the bill.\textsuperscript{152} Secondly, the approach which is used by Bill C-300 is contrary to the principles adapted by some of the major institutions such as the IMF, EDC and the Global Reporting Initiative (GRI) when it comes to ensuring that corporate social responsibility standards are followed.\textsuperscript{153} Instead of working with host countries to improve governance capacity, it is believed that Bill C-300 requires compliance on principles of corporate social responsibility to be based on international standards which are still undefined.\textsuperscript{154} Host countries will have to bear the burden of accommodating the unwritten corporate social responsibility laws of Canada before projects that require Canadian support can proceed.\textsuperscript{155} These factors add salience to why the topic explored in this thesis is of importance.

(iii) Human Rights

Legislation found to be in conflict with human rights can be a cause of serious opposition. With a growing importance of human rights around the globe, introducing a bill conflicting with these rights is bound to attract criticism. Bill C-300 was introduced to cater to the various human rights violations which had been reported. It is ironic to note that this same bill was criticized on human rights grounds. Those opposed to the bill feel that it is an unnecessary piece of legislation as

\textsuperscript{152} Janda Note, supra note 99.
\textsuperscript{153} Barrick, Kinross & Goldcorp, supra note 112.
\textsuperscript{154} Ibid.
extractive companies are already subject to a variety of international rules to ensure corporate social responsibility.\textsuperscript{156} Critics argue that Bill C-300 grants the Ministers of Foreign Affairs and International Trade too much power in allowing them the authority to issue guidelines with regard to the Canadian extractive companies undertaking activities in mining, oil or gas corporations abroad. Ministers also have the power to receive complaints and undertake any investigation if a violation of these guidelines is suspected.\textsuperscript{157} There is also concern as to whether the regulatory regime under Bill C-300 is consistent with Section 11(d) of the Canadian Charter of Rights and Freedoms. Under this Section, there is a requirement of, “a fair and public hearing before a decision-maker imposes penal consequences”\textsuperscript{158}, or with the requirements of administrative procedural fairness, which require decision-makers to act in a procedurally fair manner.\textsuperscript{159} Inconsistency with the Canadian Charter of Rights and Freedoms can be a major cause for concern.

Instead of making sure that companies carry out their operation in compliance to the guidelines for corporate social responsibility, Bill C-300 simply gives power to the Ministers to examine a specific complaint and then determine whether or not there has been a lack of compliance to the guidelines. If the company is found to be non-compliant, financial support is withdrawn. The drawback to this is that these companies are never given a warning or a chance to correct their non-compliance.\textsuperscript{160} Sustainable development can perhaps be better ensured if companies engage in remedying their faults. Withdrawing financial support for a company after they are found to be

\textsuperscript{156} Barrick, Kinross & Goldcorp, supra note 112.  
\textsuperscript{157} Janda, supra note 99.  
\textsuperscript{158} Canadian Charter of Rights and Freedoms, R.S.C 1985 Appendix II, No. 44. See also Part I, ss. 1 to 34 of the Constitution Act, 1982, s 11.  
\textsuperscript{159} Janda, supra note 99.  
\textsuperscript{160} Briefing Note, supra note 155.
in non-compliance of CSR guidelines will solve the issue temporarily but in the end, it is unlikely that it will achieve sustainable development in the long run.

(c) Strengths of Bill C-300

This section will assess the arguments proposed by the supported of Bill C-300, who maintain that the bill would have had a positive impact on those impacted by mining practices and policy. Supporters of Bill C-300 articulate their reasons in favor of the bill and furthermore deconstruct arguments against the bill. The supporters of the bill essentially saw it as a piece of legislation that Canada needed in order to become a trailblazer in corporate social responsibility in the mining sector. The following section will assess the arguments in favour of the bill on the basis of its legislative strengths and policy advantages.

(i) Policy Questions

The first argument advanced by those against Bill C-300 is policy based, and stresses that the bill will unfairly disadvantage Canadian extractive companies compared to their foreign competitors who are not subject to the same rules and regulations. In contrast to this argument, those in favor of the bill articulate that it is more likely to create a regulatory environment that would make Canadian extractive sector companies world leaders in the area of corporate social responsibility.161 As a result, Canadian companies operating overseas would have a competitive advantage evidenced by research which indicates that companies which follow CSR practices tend to be more successful than companies which do not.162 Research has shown that often those

162 ibid. at 8.
companies which prove to be socially responsible both because of mandatory regulatory measures as well as through voluntary actions usually have an advantage over their competitors who do not practice the same level of corporate social responsibility. Assuming that the regime proposed by Bill C-300 is consistent with the recommendations proposed by the National Roundtable, it would likely follow the framework outlined by the Advisory Group.\textsuperscript{163} Foreign Affairs and International Trade Canada noted that if a large number of the Canadian extractive companies were to develop respectable corporate social responsibility regimes, Canada would become a global leader in sustainable development.\textsuperscript{164}

The Ministry emphasized that CSR, “will improve the competitive advantage of Canadian international extractive sector companies by enhancing their ability to manage social and environmental risk.”\textsuperscript{165} This quote is illustrative of the Ministry’s position in support of CSR practices in the context of the mining industry which adds authority to the arguments advanced by those in favour of passing Bill C-300.

(ii) Legal Questions
With regards to legal applicability, one of issue raised by critics of Bill C-300 was that it seemed to have extra-territorial application. The problem highlighted was whether the question of whether or not the Canadian government had the authority to introduce legislation which could potentially breach the Canadian Constitution or relevant international laws. As well, the question

\textsuperscript{163} Ibid. at 9.
\textsuperscript{164} Ibid. at 8.
\textsuperscript{165} Advisory Group Report, *National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Sector in Developing Countries*, (2007), online: <http://www.mining.ca/www/media_lib/MAC_Documents/Publications/CSRENG.pdf>.
was raised of whether or not this bill would interfere with the domestic laws of countries where Canadian companies would be conducting extractive work.166

While one of the Bill C-300’s purposes is arguably to ensure responsible conduct by Canadian mining, oil, and gas companies operating in developing countries, this would not apply extraterritorially. In contrast, the bill would apply “domestically at a federal level.”167 In effect, the bill aims to establish the criteria for Canadian extractive companies operating in developing countries who are eligible to receive financial support for their projects.168

Critics also note concerns as to the procedural fairness of the Bill C-300. To counter this argument, this thesis takes the reference of Section 4(4) of the Act which arguably negates these concerns. More specifically, Ministers to whom the complaint is made are allowed to consider information from the corporation, the public, and any relevant witnesses. As a result, it is proposed that this mechanism ensures that each side is heard in the first instance.169 Critics also argued that Bill C-300 mandated guidelines which were a duplicate of the already existing corporate social responsibility strategies that were applicable to Canadian extractive companies which were operating abroad. To ascertain the truth of this critique, it is necessary to look at the already existing dispute resolution mechanisms. There are two to be exact: 1) the OECD Guidelines for Multinational Corporations 2) the GOC’s corporate social responsibility strategy.170 There are a number of differentiating factors between these two dispute resolution mechanisms and Bill C-300. One of the most obvious differences is that had Bill C-300 been

166 Ibid.
167 Ibid.
168 Ibid. at 12.
169 Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act, 2009, House of Commons of Canada, s 4.
170 Janda, Sound and Measured Reinforcement, supra note 161, at 19.
successful, it would have had the status of being an Act of Parliament. The OECD Guidelines and the GOC CSR Strategy established complaint mechanisms. However it is critical to note that despite being important, they are voluntary in nature and do not have legislative force.\textsuperscript{171}

Accordingly, it is imperative to recognize that the OECD Guidelines and the GOC CSR Strategy do not have the power to impose sanctions on the company if a breach is identified.\textsuperscript{172} In contrast, Bill C-300 has the provision which clearly states the sanction to be imposed if a breach is identified and that financial support will be withdrawn. Moreover, Bill C-300 also does not allow the publication to be withdrawn on the basis on confidentiality, a discretion which is available under the OECD Guidelines.\textsuperscript{173} Conduct can only be reviewed under the GOC CSR strategy with the consent of both the parties. Bill C-300’s strength is that Ministers do not need any such consent in order to review a complaint.\textsuperscript{174} Thus, despite having the same principles, Bill C-300 are quite different from the existing corporate responsibility dispute resolution mechanisms and hence classifying it as redundant is overlooking its potential legal ramifications.

\textsuperscript{171}\textit{Ibid. at 20-21.}
\textsuperscript{172}\textit{Ibid.}
\textsuperscript{173}\textit{Ibid.}
\textsuperscript{174}\textit{Ibid.}
IV. Future of Canadian Extractive Industry

(a) Bill C-300: A Canadian version of the Dodd-Frank?

Bill C-300 may have been defeated because of the issues discussed above but the concern for responsible and sustainable development is still alive. It is true that the bill had its flaws but the aim that the bill promoted is as important today as it was then. The question is what needs to be done to achieve that purpose. As Kofi Annan states,

It is time to face an uncomfortable truth: the accustomed model of development has been fruitful for the few, but flawed for many. A path to prosperity that ravages the environment and leaves a majority behind in squalor will be a dead end. The world today needs to usher in a season of transformation, a season of stewardship.175

Annan knew at the start of this Summit in 2002 that its main focus was to encourage a sense of responsibility to countries for their actions. Annan believed that it was time to stop being, “economically defensive” and to start taking steps to ensure responsible conduct.176 This is aligned with the goals of the Bill C-300. Arguably, it may not have been well drafted, but a well-supported motivation behind the bill it raises the possibility that given better drafting, the bill could have passed.

A picture of mining companies working harmoniously and in good faith with communities, governmental and non-governmental agencies, has hitherto often been painted.177 However, the likelihood of this occurring in practice overlooks the complexity of mining companies’

177 Lisa North, Timothy David Clark & Viviana Patroni, Community Rights and Corporate Responsibility: Canadian Mining and Oil Companies in Latin America, (Canada, Between the Lines, 2006), at c 2, 17.

Note: The Contributor of this chapter is Jose De Echave, head of the Mining and Communities Program at the NGO CooperAccion in Lima, Peru.
relationship with and impact on the communities in which they operate. According to De Echave, data from the communities where mining operations are carried out show that, “contrary to the claims of mining companies, mineral extraction has made a minimal contribution to the improvement of living standards.”

Mining industries argue that these mining operations are a source of income for a large number of people as well as providing employment. Tolvanen states that this may not be completely false. Greenstone Mining did initially have a good effect on the economy of the community where its activities were carried out; however, these benefits were only temporary and the long-term effects were quite disastrous. What is the solution? If regulation is what Canada needed, Bill C-300 was providing that regulation yet it did not succeed as law for the reasons discussed above.

What other forms of regulation can the Canadian government introduce? One piece of legislation which can be referenced for comparison is Dodd- Frank, a 2010 federal statute of the United States. Despite differing from Bill C-300 in legislative format, the Dodd-Frank includes a specific section which serves the same purpose as the Bill C-300. Dodd-Frank is a useful reference of comparison to Bill C-300. It has already been seen that voluntary initiatives are not the most effective way of ensuring that rights are enforced. Voluntary initiatives have been present for many years but the results that are achieved through them are arguably minimal. Prior to the Dodd- Frank, the United States was in a similar situation and this led to the introduction of two bills in an attempt to stop the illicit trade in minerals in 2009. This approach was favoured

\[^{178}\text{Ibid.}\]
\[^{179}\text{Ibid.}\]
\[^{181}\text{Ibid.}\]
over a reliance on unenforceable voluntary initiatives.\textsuperscript{182} Initially, there were two separate bills but they were both incorporated to form one bill which came to be known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, becoming law in 2010. This piece of legislation had a huge impact on the way financial issues were regulated in the United States and it had an effect on all the financial services of the nation.\textsuperscript{183} Two of the provisions in Dodd-Frank-- namely 1502 and 1504-- were intended to promote greater international transparency and sensitivity to human rights by oil, gas, and mining companies as well as companies that purchase minerals from the Democratic Republic of the Congo (DRC) and surrounding areas.\textsuperscript{184} These two provisions can be seen as being parallel to the intent of Bill C-300. A discussion of the reaction to the Dodd-Frank can be useful in understanding what the implications of the Bill C-300 would have been and whether the bill would have been a success.

The Dodd-Frank focuses on disclosure obligations for activities related to conflict minerals, payments to government and safety issues at domestic mines. Specifically, the provisions of Dodd–Frank were designed to cut off financing to those companies who were making money through illegal mines by requiring the disclosure of minerals mined from Democratic Republic of Congo or adjoining areas as well as publicly reporting on measures undertaken to the Securities and Exchange Commission.\textsuperscript{185} Commentators argue that Bill C-300 on the other hand

\textsuperscript{184} Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R 4173, 2010, s 1502-1504.
\textsuperscript{185} ibid.
was wide-reaching in its ambitions.\textsuperscript{186} Although it is agreed that it is necessary for the government to take part in ensuring that Canadian companies are socially responsible for their actions abroad, it is puzzling why a bill that arguably would have provided a solution to this perceived problem was defeated in its third reading\textsuperscript{187}.

Since Dodd-Frank has been signed into law, there has been continuous debate over its potential benefits as well as perceived attached costs. Dodd-Frank is a more substantial piece of legislation when discussing corporate social responsibility because unlike Bill C-300, it is in effect as law today. Like any other piece of legislation, there were concerns as to the success of Section 1502 and 1504 of Dodd-Frank as well. However, the benefits must have outweighed the costs as it stands as law today. Looking at those very benefits will be helpful in ascertaining an effective solution for the Canadian extractive companies.

A study on the Dodd-Frank examined the costs and benefits for companies as they become familiar with the legislation and how to manage the new legislation.\textsuperscript{188} What is apparent is the reality that different companies take alternate approaches and have different levels of understanding the impacts of legislation. Accordingly, once they become more aware of the implications to the perceived costs, compliance tend to decline.\textsuperscript{189} It is argued that this adaptive effect could have been true for Bill C-300. At first, the extractive companies felt that the rules

\textsuperscript{187} O’ Callaghan and Breachtel, supra note 182.
\textsuperscript{189} ibid.
would have a negative impact and compliance costs would be relatively high.\textsuperscript{190} Had the companies taken the opportunity to learn more about the benefits of the legislation, they would have realized that it was in fact manageable. As companies started to become familiar with the impact of Section 1502 of Dodd-Frank, they also started to realize that through this legislation, they had the opportunity to reap benefits associated with compliance. These benefits included: better risk management, new opportunities for innovation and improved supply chain performance.\textsuperscript{191} Despite the various shortcomings of Bill C-300, it is argued that there were inherent benefits associated with the bill as well. It has been noted that although regulations are seen as a form of constraint, this same constraint has the possibility to positively lead to creativity and innovation.\textsuperscript{192} Companies should involve people to look into the process of Section 1502 in order to find new business opportunities\textsuperscript{193}. Perhaps this was also what was needed for Bill C-300 to be successful in Canada.

It is noteworthy to consider that despite the fact that both countries had the same aim when it came to improving corporate social responsibility in the mining industry, the political situation in both countries was quite different from each other. Dodd-Frank passed at a time when the Democrats were in control of the legislature and the bill was supported by the Democratic Party. On the other hand, Bill C-300 was a private members’ bill from an opposition Member which was not supported by the government at the time. Arguably, this thesis takes the position that this can be seen as another cause of the bill’s failure in Canada. Bringing a bill that is supported by the government of the time can be a great advantage in ensuring that the bill succeeds as law. It

\textsuperscript{190} Ibid.
\textsuperscript{191} Ibid.
\textsuperscript{192} Ibid.
\textsuperscript{193} Ibid.
is possible that there was in fact nothing wrong with Bill C-300 beyond the act that it was not supported by the government of the time and was a Private Member’s Bill. Had the government in power introduced Bill C-300, there is the possibility that it would have been law today. It would be an oversight to contend that Section 1502 of Dodd-Frank did not stir up controversy. Despite being contentious, stakeholders agree that it is necessary to ensure that the quality of life of the miners and the community in which these mining activities are carried out is improved.\(^\text{194}\) Considering that they hold this common belief, they can work together to determine an accountability scheme that works. There were a number of consequences of Dodd-Frank, some of which are discussed above. However, it is believed that given the time to implement, more realistic solutions can be determined.\(^\text{195}\) Dodd-Frank may have succeeded as law but at an international level, it certainly seems to be a “dummy law” that groups learnt from while making similar regulations.\(^\text{196}\)

(b) E-3 Plus as a Possible Solution

With the failure of Bill C-300 to pass in the federal legislature, it is worthwhile to look at other alternatives to this legislation which purport to have a similar positive effect. Prospectors and Developers Association of Canada (PDAC) proposed E-3 plus as an alternative to Bill C-300. Jon Baird, President of PDAC used Plato’s example to illustrate the problems that underlay in Bill C-300. Baird stated that Plato foresaw problems of trying to ensure good behaviour through legislation when he wrote:

\(^{194}\) Ibid.
\(^{195}\) Ibid.
\(^{196}\) Ibid.
“Good people do not need laws to tell them to act responsibly, while bad people will find a way around the laws.”

PDAC shares the same goal as Bill C-300 where there should be improved corporate accountability for Canadian mining companies when they operate in developing countries. The caveat was that the PDAC took a different approach, namely, voluntary compliance. This was in consideration of the reality that corporate social responsibility is very complex in nature itself and at times, Canadian mining companies are found to be operating in difficult environments and are faced by unpredicted events over which they have no control. The main flaw in the bill found by this Association was that it operated more on a basis for accusing those who were not complying with corporate social responsibilities rather than identifying solutions for the problem itself.

It is argued that corporate social responsibility leadership will unlikely be achieved by withdrawing financial assistance to those companies who violate guidelines to sustainable development. It has been noted that although it is clear that everyone is expected to compete to become a global leader in corporate social responsibility, little has been done to define the concept and what it means to companies in practice. Additionally, corporate social responsibility initiatives can vary depending on the criteria and effectiveness. PDAC argues that to expect companies to become leaders in CSR when the concept itself is not clear is unrealistic. Rather than blaming companies for their lack of compliance, steps should be taken to improve

198 Ibid.
performance. PDAC believes that this will be achieved through “sophisticated, multi-faceted and flexible strategies.”\textsuperscript{199} Baird is important with regard to his paper because he was of the opinion that good behaviour cannot be forced by legislation and thus, proposed the e3 Plus which he described as “the first comprehensive set of CSR guidelines for mineral exploration in the world.”\textsuperscript{200} Its simple goal is to help companies to achieve excellence in each of those areas.\textsuperscript{201} Members of PDAC believe that the important approach is to make mining companies aware of corporate social responsibility and how to live up the expectations it entails, more so than regulation.\textsuperscript{202}

Bill C-300 is seen as a way of holding Canadian companies accountable where the host governments are weak. It is true that it overlooks the actual issue, which is that it is the host governments which need to be strengthened in the long term. Addressing the actual concern will be helpful in getting rid of the problem altogether. Host governments have a responsibility to hold companies operating in their country accountable for any human rights abuses or environmental degradation that may occur. However, many of these governments are institutionally weak and lack the capacity to deal with such concerns leaving the victims without redress or able to look elsewhere for relief. Bill C-300 did not deal with this issue but simply withdraw support from companies found non-compliant. While that may solve the issue for a short term, the long term problem is the one that needs to be dealt with. Although Baird believes

\begin{itemize}
\item \textsuperscript{200} ibid.
\item \textsuperscript{201} ibid.
\item \textsuperscript{202} ibid.
\end{itemize}
that both the bill and the goals of the e3 Plus are similar, he sees the bill approaching it from the other direction.\textsuperscript{203}

E-3 Plus is not the only voluntary initiative; mining firms are involved in a number of voluntary initiatives which are aimed at encouraging responsible behaviour and these firms oppose mandatory regulations on the ground that such regulations harm their competitive position. The Canadian government maintained much of the focus on creating an institutional capacity in developing countries so the extractive sector can be better governed.\textsuperscript{204} However, while many critics feel that this may be beneficial in the long run, in the short term, it leaves the victim without any redress if the alleged corporation is not willing to engage.\textsuperscript{205} It was during the lawsuit filed against the Talisman Energy based in Calgary for human rights abuses in Sudan that the then Liberal government realized the need to look into how the Canadian extractive industry could be best regulated.\textsuperscript{206}

It was after the incident that the government realized that something more was needed in order to regulate mining companies. Those who wanted better laws argued that although voluntary regulation was one of the ways to ensure behaviour, on its own, it was not enough in order to hold the companies accountable when they committed human rights and environmental violations abroad.\textsuperscript{207} Even then, mining firms argued that complying with mandatory laws would be difficult for them because it would result in a competitive disadvantage with mining

\begin{footnotesize}
\begin{enumerate}
\item Baird, supra note 197.
\item Drohan, supra note 1, at 2.
\item Ibid.
\item Ibid.
\item Ibid.
\item Ibid.
\end{enumerate}
\end{footnotesize}
companies around the globe.\textsuperscript{208} While both sides had their respective concerns, the government was caught in between; concerned that introducing such mandatory legislation might result in the infringement of the sovereignty of the foreign government.\textsuperscript{209} What is apparent is that this issue, while salient in nature, has yet to be resolved.

\textbf{(c) Voluntary Initiatives vs. Mandatory Legislation}

The government policy as it exists today is often criticized in that all the initiatives are in fact voluntary and that even though sanctions exist, the sanctions are minimal and do not provide any of those affected with legal remedy. While true, this thesis argues that voluntary initiatives should not be swept aside in haste. They have a positive impact on the mining sector because they have raised the importance of human rights within the industry. Additionally, it is also possible for some of these to become mandatory such as the Global Reporting Initiative. This voluntary initiative shows companies how they can keep a track on their social and environmental performance. Thus, while voluntary initiatives alone are not enough, they do possess certain advantages. Although to date, there has been no such mandatory policy initiated that Canada might follow, Britain and Denmark have in fact initiated policies requiring disclosure on any environmental or social policy that they have implemented and how they have done so.\textsuperscript{210} Yet, none of these unfortunately are seen as the answer to the problem. One thing that is certain is that if such disclosures are mandatory, there is a chance of increased transparency which is crucial for accountability.\textsuperscript{211} The Mining, Minerals and Sustainable Development

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{208} Ibid.
\item \textsuperscript{209} Ibid.
\item \textsuperscript{210} Drohan, supra note 1, at 4.
\item \textsuperscript{211} Ibid.
\end{enumerate}
\end{footnotesize}
Project (MMSD) is also very important when discussing voluntary initiatives. Its report reviewed the role that voluntary initiatives play in the sustainable development of mining. For the purposes of this project, voluntary is defined as activities that companies undertake which go beyond than the social and environmental performance set by the legislation. The findings of this project suggest that voluntary initiatives on their own would be insufficient to move the mining industry towards sustainable development. According to the MMSD, voluntary initiatives form a “policy landscape” and it was suggested that for these voluntary activities to be fully effective, there needed to be some sort of backing on them, either enforced by collective action or by government intervention.

The CSR debate in the context of Canadian mining company’s practices has yet to be resolved. Bill C-300 made a promising start by increasing public awareness of the harm that mining activities have the potential to cause. Critics believe that there needs to be continued public awareness of the contradictions that the Canadian government make concerning their activities at home and abroad. The government should be pressured into introducing mechanisms which are regulatory in nature and which will help in punishing corporate criminals. The introduction of policy changes could be the first step. For example, to introduce legislation in the Canadian Corporations Business Act along with other acts which would lead to dissolution of those companies which repeatedly violate laws. Unlike the provisions in Bill C-300, this would take

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213 Ibid. at 2.
214 Ibid.
215 Ibid.
216 Ivanoff & Broughton supra note 32 at 11.
217 Ibid.
218 North, Clark & Patroni, supra note 177 at 219.
219 Ibid.
away the opportunity for companies to locate elsewhere in order to avoid the sanction that the bill was imposing. By dissolving the companies, they would not be left with any option but to carry out their activities in a more sustainable manner. The Criminal Code could be edited to make corporations held accountable for the decisions they make.\textsuperscript{220} The primary step is to change the role of the government itself, which currently remains inclined towards supporting the interests of the business corporations. However, this role needs to be changed to becoming advocates for human rights, sustainable development and the environment.\textsuperscript{221} Only when the government considers this to be its primary concern and adequately provides resources which the victims of these mining abuses can use to get some relief will there be a change in the way things are at the moment.\textsuperscript{222}

\textsuperscript{220} Ibid. \\
\textsuperscript{221} Ibid. at 220. \\
\textsuperscript{222} Ibid.
V. Conclusion

The question that needs to be addressed is how communities of the developing world can hold mining companies accountable for their actions in general and especially for the harm they cause during their operations in developing countries. The answer seems just as simple: there should be regulatory laws in each country that protect human rights and require companies to operate in the highest standards to guard against any detrimental effects to the environment. However, it has been noticed that this simple solution does not always solve the problem as seen in Section 1502 of Dodd-Frank. In case of a conflict, the mining industry has a clear advantage due to the enormous imbalance of power between them and the communities or individuals of the developing country.223 In such situations, despite wanting to, the communities or individuals are unable to successfully fight for their rights because of the limited number of tools and resources available to them.224

Bill C-300 may not have succeeded as law but it has left an imprint on the mining industry by exposing the various concerns around this sensitive issue.225 Due to the wide media coverage it received, the public has now become a lot more aware of the various violations that mining companies commit while operating in developing countries. This increased awareness has had a huge impact in pushing the mining companies to make this issue a priority and move in the right direction. Mining activist Sakura Saunders claims that even though the bill was unlikely to pass, this impact alone is quite significant and ought to be acknowledged.226 Rights Action activist Karen Spring also holds the same opinion believing that the bill has caused enough buzz and the

223 Green Research, supra note 188.
224 Ibid.
225 Ibid.
226 Mychalejko, supra note 39 at 4.
resulting public campaigns put sufficient spotlight on the issue which made the government take action and look into possible solutions.\textsuperscript{227} In any mining activity, the home government is the government where the multinational mining company is registered and the host government is the government of the country where the mining activity is to be carried out.\textsuperscript{228} In recent years, the role of the home government has received more and more attention and the impact it has on mining development has become an issue of concern as usually the home governments find themselves to be in a conflicting position.\textsuperscript{229} While they need to ensure that social and environmental protection is maintained, they must also make sure that economic development is not undermined.\textsuperscript{230} Canada is home to a huge number of mining activities. Throughout the years, as the number of environmental and social disasters has increased, there has been a tremendous pressure on the Canadian government to hold Canadian mining companies accountable and to prevent such disasters from occurring in the future.

Barrick Gold Corporation, Kinross Gold Corporation and Gold Corporation are three of the major mining companies in Canada that are well known around the world as the recognized leaders in the area of corporate social responsibility. They sent a submission to the Standing Committee on Foreign Affairs and International Development in which they stated why the Bill C-300 was not acceptable in their situation and how it would prove to be harmful for them.\textsuperscript{231} In their submission, they claimed that they are “fully committed to operating in an environmentally and socially responsible manner, to protecting human rights, and to making a positive difference

\begin{thebibliography}{9}
\bibitem{227} Ibid.
\bibitem{228} Julia Sagebien & Nicole Marie Lindsay, \textit{Governance Ecosystems: CSR in the Latin American Mining Sector}, (Palgrave MacMillan, 2011), c 4, \textbf{at 64}.
\bibitem{229} Ibid.
\bibitem{230} Ibid.
\bibitem{231} Barrick, Kinross & Goldcorp, \textit{supra} note 112 \textbf{at 3}.
\end{thebibliography}
in the communities in which they operate.”²³² They agree that Canadian companies should be held accountable for acting irresponsibly. However, it is this specific Bill C-300 that they opposed. As can be seen, it is not accountability to which these extractive companies oppose, but in fact to the way they are being held accountable under the Bill C-300.²³³

Even though Bill C-300 was defeated, it is important that the community realizes how critical this issue is and how important it is to resolve it. As an anti-mining activist Zorrilla said, “One is left to wonder how many more deaths it will take to convince the Canadian Parliament and people that something needs to be urgently done to reign in their corporations and prevent all these tragedies”.²³⁴ The number of deaths caused by these mining companies continues to increase and with the defeat of Bill C-300 and limited measures of accountability in place, the mining companies will continue to get away unscathed. There have been studies showing that mining companies can benefit by getting ahead of the corporate social responsibility trend by implementing CSR to prevent unfortunate incidents from occurring.²³⁵ There is a common belief that only when social responsibility frameworks are seen as a tool rather than a burden will companies really benefit and will be able to incorporate it as a part of their culture.²³⁶ The current state of corporate social responsibility regulation gives too much discretion to the companies and critics believe that this is not enough to be able to control human rights and environmental abuses. It is the duty of the State to ensure that their citizens are protected and until the State takes a part to regulate, the issue will not be resolved.

²³²Ibid.
²³³Ibid.
²³⁴Mychalejko, supra note 39 at 4.
²³⁵Movements and Footprints, supra note 7, at 16.
²³⁶Ivanoff & Broughton, supra note 32 at 11.
Let nobody doubt for a moment that responsible resource development and environmental protection remain core Canadian principles. Indeed, principles which have led Canada to develop some of the most effective environmental regulations and most transparent monitoring programs in the world. And we expect that these principles will be respected, not just in Canada, but wherever Canadian mining companies and miners work around the world.  

These were the words of Stephen Harper, Prime Minister of Canada in a statement in Cartagena, Columbia earlier this year. Only time can tell whether Canada will become a true leader in responsible development; there is certainly a long way to go. The statement above paints an ideal picture, where Canada is aware of what is important and realizes what needs to be done, but perhaps no concrete action has yet taken place and although goals have been set, they have not completely been achieved. As a result, the truth in Stephen Harper’s statement feels bitter and perhaps will remain questioned for years to come. The issue of human rights violations and environmental degradation will not be resolved until there is a mechanism which not only holds companies accountable when such violations are proven but also ensures that companies take the initiative to prevent such violations from occurring in the future. Bill C-300 brought to light an issue which is regarded as highly important. It may have failed as law but it did achieve success by raising concern for responsible mining. To deal with this concern, the Canadian extractive sector will need to take a positive part in the initiatives introduced, whether they are mandatory or voluntary or perhaps even a combination of the two. It is important to point out that it may not be possible to make mining activities completely risk-free because of the nature of the activity. However, it may be possible to prevent the unnecessary harm that these companies cause to the community of the environment.

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237 Prime Minister Stephen Harper at Summit of the Americas in Cartagena, Colombia, (2012).
LEGISLATION

*Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act*, 2009, House of Commons of Canada.


SECONDARY MATERIALS: BOOKS


Sagebien, Julia & Lindsay, Nicole Marie, “Governance Ecosystems: CSR in the Latin American Mining Sector”, (Palgrave MacMillan, 2011).

SECONDARY MATERIAL: ARTICLES


Armstrong, Trefor, “The Effects of Mining on the Environment” (2010), online: Barrie Youth Ambassadors


Arthur J. Gallagher & Co et al., “Corporate Social Responsibility” (2012), online:


Balla, Andi, “Dodd-Frank’s Canadian twist” (2011), online: Canadian Lawyer


Barrick Gold Corporation, Kinross Gold Corporation, Goldcorp Inc., “Bill C-300 - An Act Respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries”, online: Barrick Gold Corporation
Bourassa, Michael, “Legislative Developments and Corporate Social Responsibility Trends & Initiatives in the Mining Industry” (2010), online: Fasken Martineau
<http://www.fasken.com/files/Publication/e52311a5-6cf7-4207-a2c1-9311f256d072/Presentation/PublicationAttachment/8e311712-b762-4d6d-9b47-9ee99f9fd674/Article_Legislative_Developments_and_CSR_in_Mining_Dec10_Whos_Who_Legal.pdf>.

Bourassa, T Michael & Todd, Charles, “Bill C-300 threatens Canada's international extractive sector” (2009), online: Fasken Martineau


Broomhill, Ray, “Corporate Social Responsibility: Key Issues and Debates” (2007), online: Dunstan Paper
<http://economia.uniandes.edu.co/content/download/44479/380138/file/Corporate_Social.pdf>.


OECD Guidelines for Multinational enterprises” (2008), online: Hansen Law Review

Cherry, Miriam A & Sneirson, Judd F, Chevron, “Greenwashing, and the Myth of ‘Green Oil Companies”, online: Washington and Lee University, School of Law

Clark, Tim, “Canadian Mining Companies in Latin America: Community Rights and Corporate Responsibility” (2002), online: York University

Conway, Kevin, “Tracking Health and Well-Being in Goa’s Mining Belt” (2003), online: International Development Research Centre

Creskey, Jim, “Mining for Human Rights in Latin America” (2011), online: Embassy Magazine

“CSR Frameworks Review for the Extractive Industry” (2009), online: Canadian Business for Social Responsibility


Government Response, Fourteenth Report, House of Commons on Foreign Affairs and International Trade, “Mining in Developing Countries-Corporate Social Responsibility” (2005), online: Parliament of Canada


Idemudia, Uwafiokun, “Corporate social responsibility and developing countries moving the critical CSR research agenda in Africa forward” (2011), online: SAGE Journals <http://pdj.sagepub.com/content/11/1/1.short>.

Ivanoff, Hannah & Broughton, Gianne, “A Question of Integrity: Regulating the Canadian Resource Extraction Industry Abroad” (2011), online: Canadian Friends Service Committee

Janda, Richard, “An act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries [Bill C-300]: Anatomy of a Failed Initiative” (2010),


McKinley, Andrew, “The Drivers and Performance of Corporate Environmental and Social Responsibility in the Canadian Mining Industry” (2008), online: University of Toronto Research Repository


<https://tspace.library.utoronto.ca/bitstream/1807/17202/1/McKinley_Andrew_C_200811_MA_thesis.pdf>.

Seay, Laura E., “What’s Wrong with Dodd-Frank 1502?” (2012), online: Center for Global Development <http://www.cgdev.org/content/publications/detail/1425843/>.


Villafaña, Camille, “The evolution of Corporate Social Responsibility (CSR) discourse in mining: Canadian mining companies in Latin America (2003 to present)” (2010), online:
