

Global Affairs Canada

Home > Closing Report - Request for review file #2011-01-MEX

This Web page has been archived on the Web

Information identified as archived is provided for reference, research or recordkeeping purposes. It is not subject to the Government of Canada Web Standards and has not been altered or updated since it was archived. Please contact us to request a format other than those available.

Closing Report

Request for review file #2011-01-MEX

The Office of the Extractive Sector Corporate Social Responsibility Counsellor
Government of Canada
1 Front Street West
Suite 5110
Toronto, Ontario M5J 2X5 Canada

Views expressed herein are those of the Office of the Extractive Sector CSR Counsellor.

Errors and omissions remain the responsibility of the Office.

October 2011

This report is available in [Spanish](#).

The Office's Key Guiding Principles:

Accessible, Effective, Independent, Transparent, Responsive, Predictable

The Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor is part of the Government of Canada's CSR Strategy for the Canadian International Extractive Sector. The Counsellor reports to, and acts as a special advisor to, the Minister of International Trade. The Counsellor may make recommendations to parties and provide advice; however, the Office is nonpartisan and does not have any policy-making role. In executing its dispute resolution mandate, the Office acts as an impartial advisor and facilitator, an honest broker who brings parties together to fix problems before they become issues and resolve issues before they become intractable.

The first Extractive Sector CSR Counsellor, Marketa Evans, was appointed in October 2009. The Office was opened in Toronto in March 2010. To support the construction of this new Office, the Counsellor adopted a cross-sector, open and dialogue-based approach with the wide range of stakeholders interested in the issues of CSR and Canada's mining, oil and gas industries.

The construction of the Office's review mechanism, a dispute resolution process, was informed by a formal and proactive multiperspective dialogue, during which over 300 individuals and organizations directly participated, both in Canada and overseas. Supporting documents, including the rules of procedure, information brochure and Participant Guide, are available on the [Office's website](#).

Table of contents

- [1. Executive summary](#)
- [2. Introduction](#)
- [3. Background and the review process in brief](#)
- [4. How we work and what we expect](#)
- [5. The participants in the request](#)
- [6. Annotated chronology](#)
- [7. Summary remarks](#)

1. Executive summary

This report closes the Office of the Extractive Sector CSR Counsellor's request for review file #2011- 01-MEX, related to Excellon Resources Inc.'s La Platosa mine project in Mexico.

The purpose of this report is to meet our statutory reporting requirements and our commitment to our key guiding principles of transparency and effectiveness. This closing report reflects a summary of the request for review, activities undertaken by the Counsellor and the participants to

resolve the disputes, and the commitments made by the participants during the review process. The mandate of the Office is part of the Government of Canada's strategy on CSR for the Canadian international extractive sector. The Counsellor was not able to fulfill her mandate of bringing parties together into a constructive dialogue. Excellon Resources Inc. withdrew from the process before proceeding to the dialogue stage. Given a number of factors, noted in this report - including the efforts made to address Excellon's substantive concerns, the good faith, constructive nature of the request, and the wide-ranging issues project-affected stakeholders raised with the Counsellor during the process prior to termination - it is the Counsellor's view that this request should have straightforwardly proceeded to structured dialogue, as it could have been expected to provide benefits for all parties.

The request before the Office was a good faith, bona fide request by core Excellon constituencies for a mediated dialogue under the auspices of the Office, to discuss a wide range of concerns and issues. The request met all of the criteria for consideration under the Office's mandate. All of Excellon's substantive concerns were heard and, to our knowledge, had been satisfied. The requesters are directly affected groups, who surfaced areas of substantive concern, with a view to resolving them in a constructive, mediated dialogue, a reasonable request that is clearly identified as corporate good practice by numerous industry standards and guidelines. During the Office's visit to the mine site and surrounding community in July 2011, the requesters expressed that there were significant trust and relationship deficiencies.

The Office's review mechanism is a voluntary dialogue process designed to explore interests and generate creative options in order to resolve and minimize disputes. This process was built to enhance the ability of Canadian extractive sector companies operating overseas to manage their social and environmental risks. Such a process requires good faith on all sides, mutual commitment, and two way responsibilities. The requesters repeatedly demonstrated their good faith and desire to move quickly to a mediated dialogue.

Excellon stated that the process does not provide value to the company as Excellon stated that it is meeting all its commitments at the site level and that it is currently engaging in dialogue with relevant stakeholders. The requesters however, do not share that perspective and continued to express their interest in mediated dialogue with the company under the auspices of the Office. In the view of the Counsellor, Excellon's decision to withdraw prior to dialogue represents a significant missed opportunity to build a deeper understanding of the issues and enhance reputation and risk management.

The Counsellor regrets that she has been unable to fulfill her mandate. The good offices of the Counsellor for facilitated dialogue remain open to the parties, should circumstances so permit in future.

2. Introduction

Summary

This is the closing report for the request for review involving Excellon Resources Inc., file#2011-01-MEX. The purpose of this report is to meet our statutory reporting requirements and our commitment to our key guiding principles of transparency and effectiveness.

Excellon Resources Inc. withdrew from the review process before the beginning of the structured dialogue with the requesters. The process is voluntary and requires the express written consent of participants. Excellon Resources Inc. did not provide its written consent to participate in the dialogue, consent required in accordance with the Counsellor's mandate.

As a result, the Counsellor has been unable to fulfill her mandate to bring the parties together in a constructive dialogue.

Reporting

In accordance with the Office's rules of procedure as approved by the Minister of International Trade, Government of Canada, in September 2010, this closing report reflects a summary of the request for review, activities undertaken by the Counsellor and the participants to resolve the dispute, and the commitments made by the participants during the review process.

The Counsellor is not a judge or an arbitrator and does not pronounce on the veracity of substantive points of disagreement between the parties. The views expressed in this report on such substantive issues are those of the parties, and not those of the Counsellor. The Counsellor listens to all points of view but does not take sides. The Counsellor believes that when different perspectives are surfaced, areas of common ground and mutual interest are often found.

In accordance with the rules of procedure, parties are instructed not to share confidential information with the Office until the "express written consent" to proceed to structured dialogue is obtained.¹

Full reports pertaining to this file are posted under the Registry of Requests tab on the Office's website.²

Results

The objective of the Office is to bring parties together in a constructive dialogue. The Counsellor understands that parties may come together in such a structured dialogue forum and may be unable to reach an agreement for any number of reasons. Such dialogue is not always fruitful.

However, Excellon Resources Inc. decided to suddenly withdraw from the request before proceeding to structured dialogue with the project-affected stakeholders represented in this request for review. The requesters viewed Excellon Resources Inc.'s decision to withdraw without even

attempting the structured dialogue with its project-affected stakeholders as an unacceptable action. Given Excellon's prior public commitments to dialogue, requesters believe Excellon's actions demonstrate bad faith.

The following factors suggest to the Counsellor that this request for review had every reason to move fruitfully to the structured dialogue:

- **The context of the Government of Canada's CSR Strategy**
The Government of Canada encourages and expects all Canadian companies working around the world to respect all applicable laws and international standards, to operate transparently and in consultation with host governments and local communities, and to conduct their activities in a socially and environmentally responsible manner
- **Current consensus industry guidance on stakeholder dialogue**
International, Canadian and exploration/junior industry guidance all point to the importance of stakeholder dialogue for the mining industry
- **The way that the Office's review process was built and its objectives**
The review process was built with full Canadian mining industry participation, consultation and endorsement as a positive option for Canadian companies faced with disputes
- **The changes in the global operating context**
Over the past several years, the UN Framework on Business and Human Rights has clarified the "responsibility" of business to respect human rights and the need for greater corporate due diligence and increased access to remedy. The onus on companies now is to "know and show" they respect human rights³
- **The bona fide, constructive and good faith nature of this particular request**
Directly-affected stakeholders clearly underpin this request for a dialogue with the company
- Excellon's public statements, indicating that corporate social responsibility is "fundamental to our business strategy"
- Excellon's repeated signalling, in writing and verbally, of its interest and intent to proceed to structured dialogue
- **The extensive efforts made to address Excellon's substantive concerns with the dialogue process**
These substantive concerns were addressed in early July, and no further substantive obstacles to dialogue were communicated to the Office by the company
- **The numerous areas of miscommunication, misunderstanding and differing perspectives the Office notes from its involvement in this request, many of which are unrelated to any legal or regulatory frameworks**
In the Counsellor's view, a structured dialogue forum would have served to constructively surface and potentially resolve issues

Taken together, these factors suggest to the Counsellor that this request for review had every reason to move fruitfully to the structured dialogue. The Counsellor is of the view that Excellon's withdrawal represents a significant missed opportunity for the company to meet its stated interests of building relationships and reputation with Mexican stakeholders.

Steps in the review process - file#2011-01-MEX

April 8, 2011	Step 1: The request for review was submitted to the Office.
April 11, 2011	Step 2: The Office acknowledged the request.
April 14, 2011	Step 3: The Office found the request eligible for the review process and advised all parties. This screening determined eligibility of the request for the mandate of the Office; it did not endorse or validate any of the matters raised in the request.
April-September 2011	Step 4: The Counsellor worked with the parties in informal mediation and trust building.
Late September 2011	Excellon withdrew from the process prior to structured dialogue.
October 2011	The closing report is posted on Office's website.

The Context

Canada is the second largest foreign investor in Mexico after the United States. Mining has a long history in Mexico, with some current mines still in operation after one hundred years or more. But the Canadian mining presence in Mexico is fairly new. In the early 1990s, Mexico changed its domestic regulatory framework to permit foreign investment into the mining industry, which until then had been entirely domestic. The country's significant mineral wealth has encouraged an increase in foreign investment in recent years. Mining is a significant economic engine in Mexico, directly employing over 300,000 people. After oil and tourism, mining is Mexico's third largest source of foreign income. Of the 269 foreign-owned companies in the sector currently (2010) in Mexico, some 204 companies are Canadian, although most are junior exploration interests without mining operations. Twenty-five Canadian companies operate some 40 producing mines. While the two largest mining companies in Mexico are domestically owned, the Canadian investment is both significant and growing. Canadian investment in the sector stands at some \$5.5 billion and will increase in coming years as a number of new mines are scheduled to come on stream.

3. Background and the review process in brief

The Government of Canada's CSR Strategy for the International Extractive Sector was announced in March 2009, and this Office was created as a result of that Strategy.⁴ The CSR strategy seeks to improve the competitive advantage and reputation of Canada's international extractive sector companies by enhancing their ability to manage social and environmental risks. The Government of Canada encourages and expects all Canadian companies working around the world to respect all applicable laws and international standards, to operate transparently and in consultation with host governments and local communities, and to conduct their activities in a socially and environmentally responsible manner.

The Guidelines endorsed under the Government of Canada's CSR strategy:

1. The International Finance Corporation (IFC) Performance Standards on Social and Environmental Sustainability for extractive projects with potential adverse social or environmental impacts
2. The Voluntary Principles on Security and Human Rights for projects involving private or public security forces
3. The Global Reporting Initiative for CSR reporting by the extractive sector to enhance transparency and encourage market-based rewards for good CSR performance
4. The OECD Guidelines for Multinational Enterprises

In addition to the OECD Guidelines for Multinational Enterprises, which the Government of Canada has long endorsed and supported, the CSR Strategy notes that the Government of Canada will promote three widely-recognized international CSR performance standards with Canadian extractive companies operating abroad. These endorsed standards are the IFC Performance Standards, the Voluntary Principles on Security and Human Rights, and the Global Reporting Initiative.⁵ Working with these standards helps Canadian companies to meet and exceed their obligations with respect to corporate social responsibility. Companies can use these standards to assess their environmental and social risks and current performance, and to formulate action plans based on their particular circumstances and unique operating environments.

The mandate of the Extractive Sector CSR Counsellor is to promote responsible practices for Canadian companies abroad and to resolve disputes connected with the endorsed performance standards of the CSR Strategy.

In conversations with the Office, the Canadian mining industry has identified social risk as a key area of risk management now required to protect and enhance shareholder value. The mining industry has told us that it is critically important for companies to be aware of the dynamic changes taking place around them, and to adopt a proactive approach to stakeholder relationships, noting that a proactive approach can prevent problems and delays. Companies, we have been told, are interested in promoting "win/win" approaches that ensure stakeholders receive benefit from a mining operation. Dialogue forums help to identify stakeholder priorities and corporate abilities and strengths, in order to map out areas of possible mutual benefit. For companies, this approach also serves to manage stakeholder expectations. This industry priority is reflected in the main objective of the process - to foster constructive dialogue between companies and their stakeholders. Our dispute resolution mechanism benefited from significant input from the Canadian mining industry and that input was carefully reflected in crafting a process that would be workable, fair and constructive. This approach has continued to receive strong support within the Canadian industry.

After extensive and wide-ranging consultations both in Canada and abroad, the Office's dispute resolution process was launched in October 2010.⁶ The Mining Association of Canada (MAC) welcomed the launch of the process, noting the process's potential "to promote and facilitate" the industry's continuous improvement in CSR. The Prospectors and Developers Association of Canada (PDAC) also publicly "welcomed" the launch of the process, seeing its objectives of encouraging constructive dialogue, improving CSR performance and supporting tangible positive results on the ground as aligned with industry interests and objectives.

4. How we work and what we expect from participants

The Counsellor's job is to get the parties in the request to the table.

The Office's review process is a way for project-affected people and Canadian mining, oil and gas companies to try and resolve disputes. Requests may be brought to the Office by individuals, groups or communities who wish to raise issues regarding the overseas activities of Canadian mining, oil and gas companies. The issues must relate to the endorsed performance guidelines in the Government of Canada's CSR strategy (the IFC Performance Standards on Social and Environmental Sustainability, the Voluntary Principles on Security and Human Rights, and the Global Reporting Initiative). Canadian mining, oil and gas companies who believe they are the subject of unfounded allegations concerning their overseas corporate activities may also bring requests to the Office.

The Office creates a safe space for dialogue and creative problem solving. The process is designed to clarify issues and interests, and invent practical options. The Office seeks to understand the issues presented from a variety of perspectives and to use that knowledge to help parties generate their own creative options for mutually beneficial ways forward. Our objective is "a good way to a good place" - a good outcome, perceived as lasting, fair to all and better than the available alternatives, in a timely process that builds trust and relationships. The Office's approach to any request for review is informed by a 'mutual gains' approach to negotiation which emphasizes interest-based dialogue and the generation of options that create value for all parties. Office staff has expertise and training in building such processes.

The Office's review process is not investigative or adjudicatory. The Counsellor is not a judge or an arbiter - we do not determine who is right and who is wrong. Issues are often extremely complex, and subject to varying perspectives.

The Office is funded by Canadian taxpayers and the Counsellor is accountable to the Minister of International Trade, Government of Canada. There is no charge to use the Office; however, the Office expects participants to act in good faith. Taking guidance from the OECD procedures guide for National Contact Points, good faith behaviour means "responding in a timely fashion, maintaining confidentiality when appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved...and genuinely engaging in the procedures with a view to finding a solution to the issues raised." The Counsellor expects parties to make reasonable efforts to come to the table. The Office makes every reasonable effort to remove barriers to constructive dialogue.

Any party bringing a request before the office has two important responsibilities, which are clearly communicated to them: first, they are expected to have made some effort to resolve the issue before bringing a request to the Office; second, they must indicate their willingness to enter into and maintain a constructive dialogue with the responding party.

These reasonable responsibilities have been established to increase the chances that requesters would be acting in good faith, and thereby enhance the chances of a dialogue process being established.

The process was designed with an expectation that Canadian companies would be responsive and interested in dialogue with directly-affected stakeholders at their project sites. Stakeholder dialogue is clearly aligned with consensus good practice industry guidance:

At the international level, the International Council on Mining and Minerals (ICMM) Sustainable Development Framework highlights the importance of, among other things, company commitments to engage with and respond to stakeholders through open consultation processes, constructive engagement of employees on matters of mutual concern, and consultation with interested and affected parties in the identification, assessment and management of all significant social, health, safety, environmental and economic impacts associated with their activities.

In Canada, the Towards Sustainable Mining (TSM) initiative of the Mining Association of Canada flags the importance of corporate commitments to social, economic and environmental performance aligned with the evolving priorities of communities of interest, defined as a wide range of stakeholders including employees and mining community members. With their communities of interest, companies commit to proactively seek, engage and support dialogue regarding their operations.

For exploration and junior mining companies, the PDAC's E3 Plus Framework for Responsible Exploration includes a specific principle on engaging with host communities and other affected and interested parties, "on the basis of respect, inclusion and meaningful participation."

This consensus industry guidance strongly suggests to the Counsellor that participation in a direct constructive dialogue with bona fide project affected stakeholders in a structured setting overseen by a neutral third party built with Government of Canada and industry support provides value for Canadian companies.

The Office recognizes that voluntary standards are designed to be met over time, and are context specific. As a result, the Office places significant stock in a company's attitude and approach to stakeholder interests and issues. Responsiveness is key. Because operating environments are now in constant and rapid flux, the Office is looking to companies to signal interest in building deeper understandings, engaging in dialogue, constructive action, and potential corrective measures in approach or policy, with a view to continuous improvement.

The Counsellor believes that companies can enhance their opportunity to respond credibly and constructively by:

1. Recognizing that issues may exist of which the company is unaware or which may have developed after initial due diligence was completed;
2. Appreciating the need for expanding the sources of information beyond local legal expertise or mine site management;
3. Understanding the necessity of increased due diligence;
4. Conveying a commitment to listen respectfully to project-affected parties;
5. Conveying an interest in establishing processes that might support continuous information exchange;
6. Expressing an interest in exploring mutually beneficial remedial actions;
7. Recognizing that a legal license does not always and automatically confer the social license to operate.

5. The participants in the request

The parties bringing the request for review - the "requesters" - are identified as: (a) Excellon workers represented by the Secretary General, Section 309 Executive Committee, National Mining Union representing workers at the Platosa mine site; (b) National Mining Union of the Mexican Republic; and (c) Proyecto de Derechos Económicos, Sociales y Culturales A.C. (ProDESC). The Office's process is designed to be used by directly-affected people - individuals, groups or communities who feel they are, or may be, affected by the activities of a Canadian mining, oil or gas company operating overseas. In this request, the requesters are working with the support of ProDESC, which is permitted in accordance with the Office's rules of procedure. Any organization assisting requesters must prove proof of representation. The Office was presented with that proof in the original request for review documentation.

The stated objective of ProDESC, a Mexican NGO founded in 2005, is "the defense of economic, social and cultural rights in Mexico in order to provide enforcement, justiciability and accountability of these rights on a systemic level." The organization works in the areas of labour rights and corporate social responsibility, among others. ProDESC is supported by a variety of national and international organizations, and is a member of The International Network for Economic, Social and Cultural Rights (ESCR-Net).

The National Mining Union (NMU) is a union in Mexico representing workers in the mining and metals sectors - the full name of the union is National Union of Mine and Metal Workers of the Mexican Republic (Sindicato Nacional de Trabajadores Mineros, Metalúrgicos y Similares de la República Mexicana, or SNTMMSRM). The request for review states that the NMU currently represents 260,000 workers around the country and has collective agreements with several Canadian mining companies in Mexico. The NMU is an affiliate of the International Metalworkers' Federation (IMF), and sits on the IMF Executive Committee. In August 2011, the United Steelworkers and the NMU signed a strategic alliance establishing worker councils that will meet regularly "to facilitate exchange of information, strategic cooperation, solidarity support, and organizing initiatives."

On many occasions, the Office met and spoke with each of the requesters.

The responding party was identified in the request as Excellon Resources Inc., relating to the company's La Platosa mine project in Mexico.

Excellon Resources Inc. is incorporated in British Columbia, Canada with a principal office in Toronto, Ontario. The company is currently developing and mining silver, lead and zinc from highgrade manto deposits on the La Platosa property, located in the northeastern Durango State, Mexico. Excellon acquired the property in 1996. According to the company's website, production began in 2005. The current life-of-mine has been estimated at ten years or more.

Excellon is a member of the PDAC, which participated fully in the Office's consultations process, and issued a press release in support of the Office's process. The PDAC has created CSR guidelines for junior and exploration companies, called E3 Plus. Excellon is a member of the Mining Task Force (MTF) of the Canadian Chamber of Commerce in Mexico, which brings together a significant number of Canadian companies with both mining and exploration interests in Mexico. The MTF's mandate is to support and represent the interests of Canadian mining companies in Mexico. One of its objectives is to "support sustainable development in all regions where Canadian mining companies operate." In June 2010, the Counsellor had met with the MTF during the public consultations on the construction of the review process, to receive feedback on the process.

Excellon Resources has made many public commitments to responsible mining as integral to its business. According to the company's 2009 Annual Report: "Responsible mining defines how we do business at Excellon. We have a responsibility to protect the environment, to conduct our business based on the highest safety and ethical standards, and to contribute to the welfare of our local communities... The company is dedicated to engaging with the communities in which it operates in a responsible manner." The CEO's letter to shareholders in that report states that, "at Excellon, corporate social responsibility is not an add-on, it is fundamental to our business strategy and how we wish to be viewed in the market and the regions in which we operate. We are committed to making a positive difference in the communities in which we live and work."

ProDESC and Excellon had been known to one another for several years. In 2007-2008 ProDESC worked with the Ejido "La Sierrita de Galeana" in negotiating a lease agreement with Excellon of the lands belonging to the members of the Ejido.* The agreement was finalized in 2008.

* Common in Mexico, an Ejido is a communal surface rights ownership group, usually assigned in small parcels to villagers to be farmed under a federally supported system of communal land tenure.

6. Annotated chronology of the request for review

In bringing a request for review to the Office, requesters must indicate that they have made some previous effort to resolve the issue(s) directly with the responding party, and that they are committed to constructive dialogue with the responding party. In this case, the Office was provided with documents indicating that both of these criteria were satisfied.

April 7, 2011:

Request for review submitted to the Office.

The request raised issues related to:

A. Violations of the Voluntary Principles on Security and Human Rights, dealing with Excellon's relationships with public and private security forces and Excellon's response to human rights abuse allegations.

According to the request, an incident occurred on the mine site property in the aftermath of a theft of copper. According to the request, the company called the state police to investigate the theft and, while on the company's premises, the state police subjected several of the workers to physical beatings. The workers were not charged in the theft.

The request stated that the company failed to respond to this situation in a manner consistent with the Voluntary Principles on Security and Human Rights.

B. Violations of "several principles" of the OECD Guidelines for Multinational Enterprises including threatening workers attempting to organize, and inadequate occupational health and safety in their operations.

According to the request, in its continued work with the community over many years, ProDESC began to hear from community members who were workers at the La Platosa property of poor and unsafe labour conditions at the mine site. ProDESC documented these concerns during the 2010 calendar year. According to the request, workers were unaware of any process at the mine site by which they could bring their concerns to management in a way that would ensure concerns were taken seriously and addressed, and would ensure that workers would not suffer recrimination. According to the request, a majority of the workers at the site supported the formation, in November 2010, of what was then named Section 309 of the National Union of Mine and Metal Workers of the Mexican Republic. According to the request, workers suffered harassment due to their involvement in this process and several union leaders were sanctioned by the company for their involvement in unionizing. According to the request, the leader of this new Section 309 was fired soon after the formation of the local.

According to the requesters, the impetus for unionization was ongoing worker concern about health and safety issues. According to the request, the company has not taken steps to adequately address worker concerns about health and safety. Among other issues, the request states that the company has not been providing adequate training, equipment, discussions of safety protocols, and so on.

April 8, 2011:

Notification to Excellon Resources of the request

In accordance with the rules of procedure, the Counsellor notified the responding party by phone within 24 hours of receiving the request.

April 11, 2011:

Written acknowledgement of request to requesters

April 13, 2011:

Copy of original request sent to Excellon

April 14, 2011:

Intake screening completed; parties informed that request is eligible under the mandate of the Office

This intake screening only determined eligibility of the request for the mandate of the Office; it did not endorse or validate any of the matters raised in the request.

April 28, 2011:

The Counsellor met with Excellon for a full discussion of the request and next steps

This April 28th meeting marked the beginning of the fourth stage in the review process - "trustbuilding." In accordance with the Office's rules of procedure, the trust-building stage can carry on for a maximum of 120 business days (in this case, putting the end of this stage on or about October 3, 2011). Trust-building provides participants with an opportunity to provide context to the issues raised in the Request for Review and to voice any concerns they may have. The Counsellor works with the participants to overcome any barriers to structured dialogue. During this phase, the Office conducts extensive desk research, information-gathering, discussions with the parties, discussions with other relevant parties and experts. Before advancing to the next stage, structured dialogue, the parties are required, in accordance with the Office's mandate, to provide "express written consent" to participate in dialogue. This takes the form of a letter of intent.

During this initial meeting, after several calls with the company had taken place, Excellon provided the Counsellor with a written response to the issues raised in the request and we had an opportunity to discuss these from the company's perspective. The Counsellor explained what the review process is and what it is not. The Counsellor explained that the purpose of the process was to bring parties together in a way that permitted them to understand each other's concerns in a more constructive fashion and find ways for parties themselves to move the conversation to mutually beneficial solutions. The Counsellor explained that the review process does not generate a statement about whose facts

are correct. The Office does not involve itself in host country legal or regulatory matters. The review process applies only to the voluntary endorsed corporate social responsibility standards which underpin the Counsellor's mandate.

Excellon had a markedly different view of the situation at site than what was presented in the request. For each of the issues raised in the request, Excellon emphasized its view that that it had done nothing wrong. The company noted the following:

- A. On the issues related to the Voluntary Principles on Security and Human Rights, the company stated that "Excellon has an exemplary highly trained contracted security service which is respectful of human rights." According to Excellon its private security contractors were not involved in the incident. The company stated its view that it had dealt with the situation appropriately.
- B. With respect to labour relations issues, the company noted that a union had existed at the La Platosa site since 2005. Excellon stated that its labour relations program was exemplary and that the company had worked cooperatively with a union since the beginning of mining operations. Should workers wish to alter that arrangement, the company stated, there was a formal legal process in Mexico to follow. According to the company, no one from Excellon had ever threatened workers. On the issues of worker health and safety, Excellon stated that it adhered to a high standard of occupational health and safety. Worker safety, the Office was told, "is a priority at Platosa."

During this meeting, company representatives expressed the view that the Office's process added value for companies, and stated their desire to participate in the review process.

The meeting ended with mutual agreement that the next step be a visit to the mine site.

May 18-21, 2011:

Office conducted a field visit to Mexico City

After many conversations with the parties, and extensive, multi-perspective background research, the Office conducted a field visit to Mexico City, Mexico from 18 May to 21 May 2011.

This visit had five primary objectives:

1. clarify the issues/concerns from a variety of perspectives
2. identify and meet with relevant stakeholders
3. provide information about the Office and the process to stakeholders in Mexico
4. deepen understanding of how the Office can best assist in moving the issues forward in a way that is acceptable to the parties
5. enhance the Office's understanding of local context and issues

The Office took steps to ensure its independence from the parties, and followed good practice guidelines. All expenses for travel and accommodation were borne by the Office. An independent interpreter was hired by the Office and traveled to meetings with the Counsellor and Senior Advisor, and the costs of interpretation were borne by the Office.

Although a visit to the mine site was planned during this field visit, this did not prove possible. The mine is located close to the city of Torreón, Mexico, on the border of the states of Durango and Coahuila. These two states are currently under a travel warning issued by the Canadian Department of Foreign Affairs and International Trade, indicating that all nonessential travel, particularly by road, should be avoided. After extensive consultations it was determined that a visit to the mine could not be undertaken at that time due to security considerations. However, a visit to Mexico City to meet requesters and other interested stakeholders was deemed important.

All parties were invited to suggest individuals or organizations for the Counsellor to meet with during the visit. During this visit, the Office met with some of the requesters, the Ministry of Economy, the Ministry of Labour and Social Welfare, the Federal Council on Conciliation and Arbitration, the National Human Rights Commission of Mexico, the Solidarity Center, and officials at the Canadian Embassy. The Counsellor and the Office's Senior Advisor travelled to all the meetings together.

During this visit, the Office was provided with credible third party testimonials about concerns workers had with health and safety issues. These concerns were stated as the root cause of the workers' desire to organize a union.

It was during this field visit that the Office reflected back what Excellon had advised in our April 28th meeting - that is, that all workers at the mine site were already unionized. Requesters stated to us that they were unaware of the existence of any union at site. The Office learned that such situations are not uncommon in Mexico; workers may be unaware of unions or collective agreements that affect them.

It is not in the mandate of the Office to have a view or to make any comment as to which particular union should or should not represent workers at La Platosa. The Office was informed that domestic legal processes were being followed on that issue and the Office advised the requesters that it would not become involved in that process. The requesters confirmed that they did not expect the Office to make any sort of determination as to which union should represent workers at La Platosa. Rather, the requesters expressed concerns as to the consistency of Excellon's response with the OECD Guidelines. From the perspective of the requesters, the company had been actively interfering with the workers' right to organize and had continued to do so during the review process.

The Office was told that worker/mine management relationships were strained due a variety of factors - many unrelated to legal or regulatory frameworks - and that, from the perspectives of the requesters, many of the issues raised in the request would benefit from a dialogue with the

company, regardless of how the question of union representation unfolded.

June 3, 2011:

Debrief meeting with Excellon in Toronto

The Counsellor met with Excellon executives immediately after the field visit. Excellon's interests were highlighted as, among other things, the following:

- An excellent long term relationship with the community (Ejido)
- Good long term relationships with workers
- Preserving a positive reputation in Mexico
- Enhancing the company's understanding of global best practice guidance, including the Voluntary Principles on Security and Human Rights. More information was requested by the company on this set of standards and was provided both during the meeting and subsequently
- Creating additional avenues to meet and dialogue with workers and affected stakeholders

Company representatives expressed doubts about the substantive merits of the worker concerns about health and safety, however at the same time, they expressed strong interest in expanding opportunities for dialogue directly with workers, in an effort to explain what efforts the company was making and to hear why workers had these concerns.

During that meeting, the company stated that a mine site visit by the Office was "absolutely critical." However, the company continued to reaffirm a substantive obstacle to dialogue, a barrier reflected in their public correspondence at that time.⁷ The requesters noted that the tone and content of Excellon's public statements were not helpful to trust-building. Excellon was of the view that the requesters were not bona fide. Excellon stated their view that the requesters were not representative of any project affected individuals, groups or communities, as is required by the Counsellor's mandate. According to Excellon, ProDESC was acting of its own accord only, without the support of project-affected communities or individuals. And, according to Excellon, the National Mining Union was "illegal". As a result, in the company's view, the request for review lacked credibility.

The Office therefore had a responsibility to ensure that the review process was credible and that the stipulations of the Office's mandate were fulfilled. The Office's own due diligence revealed no indication that the NMU had been declared illegal. The Office's many conversations with ProDESC up until that time had indicated that the organization had on-going direct contact with projectaffected people and reliable information directly from project-affected individuals at the site.

July 6, 2011:

The Office visited mine site and surrounding community

The Office carefully considered Excellon's concerns, particularly Excellon's statements that projectaffected people did not underpin the request. In accordance with the Counsellor's mandate, project affected individuals, groups or communities must underpin any request for review.

The Office took Excellon's concerns seriously, in our own good faith effort to build trust and remove obstacles to Excellon's participation in the dialogue process. The company had conveyed to us that a mine site visit was absolutely critical. Due to extensive travel restrictions and security concerns, a mine site visit was a difficult undertaking for the Office; however we felt it was important to address the company's substantive concerns about the request. As a result, the Office worked to make a site visit possible and to demonstrate our good faith efforts to address the company's stated obstacle to participation in dialogue.

A decision was made to travel to the mine site. The Counsellor and the Office's Senior Advisor travelled to all the meetings together. The Office took steps to ensure its independence from the parties, and followed good practice guidelines. All expenses for travel and accommodation were borne by the Office. An independent interpreter was hired by the Office and traveled to meetings with the Counsellor and Senior Advisor, and the costs of interpretation were borne by the Office. During this visit, meetings were conducted separately with requesters and the responding party, in locations of their choosing. During the course of our visit, we met with Excellon executives and management, mine personnel, community members, workers, and other stakeholders.

Our visit to the Excellon mine site included a brief walkabout of the property, some of the buildings, a roundtable with Excellon mine personnel and others, and a tour of the underground mine. During the roundtable the company provided the Office with information about its current and future plans with respect to health and safety, explosives safety, accident protocol and investigation, environmental monitoring, operational improvements and so on. It reiterated its commitments to worker safety, training, health. We were told that the company had recently been subjected to rigorous regulatory inspections, all of which it had passed. The company reiterated its previously public statements that it would be pleased to work with any recognized union at La Platosa.

Because the Office is interested in understanding the root causes of miscommunication and conflict, it asked the company its view on what could account for the issues that we had been presented with. In response, the company's representatives stated that, in their view, there were "one or two disgruntled individuals." Company representatives also stated that this area of Mexico did not have a mining tradition and so local stakeholders may lack a clear understanding of what would be suitable practice on these kinds of issues.

After the roundtable discussion, we proceeded to a tour of the underground mine.

The Office spent the other half of the day meeting with workers and community members, in the surrounding community. We held a series of meetings specifically with the various requesters; we also held an open forum which all workers were invited to attend. These conversations allowed the Office to establish a direct connection with requesters and began the building of direct relationships. Many requesters strongly endorsed the Office's dialogue-based process and on numerous occasions expressed their gratitude that the visit was able to take place.

We spoke with dozens of Excellon's direct stakeholders, in a variety of different settings and meeting places, and confirmed that bona fide project-affected people underpinned the request. Among the concerns raised by these directly-affected stakeholders was the lack of information and communication channels with the company. For example, none of the workers we spoke to were aware, prior to the start of this Office's process, of any existing union on the La Platosa site. Workers we spoke with were unaware of the existence of the mandatory joint health and safety committee. The Office was told that, to the knowledge of those we spoke with, Excellon has no mechanisms in place for a standing, constructive dialogue on issues of concern, nor any way that workers can initiate communication or feedback on areas of concern to them. For example, workers stated that to their knowledge there was no grievance mechanism at site. Workers expressed concerns, for instance, that they did not feel adequately trained, that the process of investigation after an accident does not help in avoiding future problems. Workers expressed their view that they do not feel safe. Several times we heard of significant problems with statutory pay increases, overtime pay and so on. Workers expressed concerns that those who were participating in the union drive were suffering retaliation from mine management.

Individuals we spoke with expressed a desire to be taken seriously, to have what they view as significant personal concerns heard, to speak directly with the company in a manner that would defuse the tension and conflict. They expressed their view that the company has a responsibility to make an effort to speak directly with workers.

During this site visit, the Office received credible, third party information, from a variety of sources, detailing the original circumstances of the copper theft, the call to state police, the subsequent beatings of Excellon workers by the state police and Excellon's response to this situation. It was expressed to us that the company's response to this situation was viewed as inadequate. From the perspective of those we spoke with, Excellon had not communicated any changes in policy or procedure in light of the police incident. The people we met with stated that Excellon's relationships with stakeholders had suffered as a result of what people perceived was a callous response to the situation.

The directly-affected community members and workers who met with us were primarily interested in having the Office play a role in establishing a mediated direct and constructive dialogue forum or forums with Excellon. In our conversations with requesters, there was wide recognition of the importance of the company in providing jobs and economic development opportunities. The people we spoke with reiterated that they want Excellon to be a successful company. The people we spoke with recognized that there would be no immediate resolution of all concerns, however, the company's commitment to a dialogue process that would allow concerns to be raised and tackled was deemed critical. At no time, did any of the people we spoke with express unreasonable demands of the Office or the company. People communicated to us a hope that one positive benefit of such direct dialogue would be to improve the trust and relationship issues they had identified. These stakeholders noted their desire to see a markedly improved relationship with Excellon.

July 8 - end of September 2011:

Moving towards structured dialogue

The site visit confirmed that project-affected people were the basis of the request for review and that their hope was for a direct dialogue with Excellon in order to build a positive relationship. With this substantive obstacle to dialogue now removed, the Office had expected Excellon to move quickly to the structured dialogue stage of the process.

Why is dialogue important?

The Office's work on this request for review, and the mine site visit itself, surfaced many significant communications and understandings gaps. Many were unrelated to strictly legal or regulatory compliance. The Office saw potential for a direct dialogue forum, in a structured setting, with credible third party assistance, to help the parties break through some of the unproductive exchanges they were having. The Office's process could expand the company's ability to dialogue with new and different stakeholders in different settings, and on issues beyond legal frameworks. Among many other issues, disconnects on worker/management relationships and health and safety issues arose frequently. The following points are illustrative of such communications disconnects:

ON WORKER/MANAGEMENT RELATIONSHIPS

Excellon's views:

- Mine workers are all covered by a collective agreement with a union and had been since 2005.
- Union/management relationships are completely cordial.
- Workers at Excellon are among the highest paid in Mexico.
- Workers are free to meet with management to discuss concerns at any time.

Requesters' views:

- Mine workers did not have any knowledge of an existing union at the La Platosa site, and only learned of it as a result of the request for review process.
- Workers had no knowledge of union leadership.
- Workers at Excellon are not compensated in line with industry practices.
- Worker/management relationships are strained.

ON HEALTH AND SAFETY ISSUES

Excellon's views:

- All health and safety inspections, including some conducted recently, indicate that the company is in compliance with Mexican health and safety regulations.
- Daily health and safety briefings are held.
- All health and safety equipment is issued and maintained.

Requesters' views:

- Workers do not feel adequately equipped or trained to do the work assigned to them.
- Workers have no knowledge of the mandatory health and safety committee.
- Workers do not feel informed about Excellon's health and safety processes and steps taken after an accident.

Upon our return from the site, the Office's saw one potential constructive way forward: a direct dialogue between the parties. This could proceed as follows:

- A full briefing and discussion with Excellon on what we heard
- A terms of reference document, co-constructed by both the company and the requesters, to establish the framework for a productive dialogue
- Establishment of the dialogue table in a way that would promote effective, collaborative problem-solving

The Office recommended to Excellon quick movement in the direction of the structured dialogue stage of the review process, in order to begin the work of surfacing concerns stakeholders had. In a letter to the company, the Counsellor noted:

"...A structured dialogue can enhance corporate risk assessment and mitigation by raising issues of which the company may be unaware, flagging obligations and responsibilities which go beyond legal compliance, and structuring practical, satisfactory solutions that capitalize on shared interests and minimize the potential for on-going conflict with stakeholders. It conveys a corporate commitment to avoiding and addressing future problems or issues. We believe this tactic would fit well with the question we repeatedly heard from conversations with Excellon executives during our earlier conversations - a desire to understand "what can Excellon do differently next time?" Establishing such a dialogue forum builds trust and relationships with stakeholders, including the parties to the request for review and provides Excellon with an opportunity to share information with affected stakeholders about its current policies, procedures, and future plans."

We noted to Excellon that its commitment to participate in the construction of such a process would allow requesters to see that the Office's process would be fruitful. This in turn could work to mitigate the risk of an escalation of the dispute, a positive benefit for all.

In the two months beginning immediately after our return from the mine site, the Office made no fewer than two dozen requests to meet with company representatives and/or Board members, to fully discuss the results of the site visit and agree on next steps. The company informally met with the Counsellor only once after the July site visit, in an informal courtesy call held during the time of CEO transition on July 19th. Excellon did not make itself available to meet with the Counsellor to formally discuss the results of the site visit and next steps for moving forward.⁸

The Office repeatedly reiterated its commitment to fostering the conditions for a productive and beneficial dialogue, offering the Office's expertise (at no cost to the company) to establish the framework that would make such a structured dialogue productive and beneficial for all parties. We reiterated the Office's commitments to win/win solutions that create value for all parties. Excellon Resources was asked to note any further substantive concerns that would act as barriers to full participation in the structured dialogue; none were presented.

The community members and workers who met with us during our visit were interested in having the Office play a role in establishing a mediated direct and constructive dialogue forum or forums with Excellon, in order to air concerns and issues directly. This commitment to constructive dialogue is one of the pre-requisites for a request brought before the Office, and this commitment has been reiterated numerous times by the requesters since April 2011. Requesters have demonstrated consistent good faith during this entire process.

On August 18, 2011, the Counsellor wrote to Excellon expressing concerns about the timeliness of progress. The request had, by then, been before the Office for some months. While the company had signaled its commitment to the process at many junctures, the company also consistently advised the Counsellor that Excellon staff were fully engaged working on other pressing issues and could not participate in a dialogue process due to time constraints. In the letter of August 18, 2011, the Counsellor asked Excellon to "formally signal" its intent to move forward to the structured dialogue phase of the Office's process.

In late August, a company representative provided, by way of email note, the requested intent to move forward. The Counsellor confirmed back to Excellon her understanding that this email constituted the formal signal of Excellon's interest and intent to move forward to the structured dialogue phase of the process.

In early September, noting the upcoming expiry of the 120 business day window for the trustbuilding stage, the Counsellor wrote separately to the requesters and to the company, seeking input on a draft terms of reference document, intended to serve as a framework for a mutually productive dialogue. Parties were asked to provide input and feedback on the draft by September 19, 2011. The requesters provided such input on September 14, 2011. Excellon did not provide feedback or comment on the draft terms of reference.

On September 19, 2011, in an email note to the Counsellor, Excellon again stated time constraints as a barrier to its participation, however reiterated a generally positive interest in eventual participation in dialogue.

Further discussions about the start date of the structured dialogue were therefore deemed necessary, as the letter of intent was to be signed during the week of October 3rd. If the company could not commit the time, the Counsellor sought to understand what alternative options Excellon could suggest in order to meet its stated commitment to the structured dialogue. The company did not offer any suggestions. Instead, Excellon at that time notified the Counsellor of its decision to withdraw from the process altogether. Excellon Resources informed the Counsellor that it did not consider the dialogue process facilitated by the Office to provide value to the company or the company's shareholders.

This objection had never been communicated to the Counsellor in any prior communication or correspondence.

On learning that the company had withdrawn from the process, the requesters expressed surprise and disappointment. They reiterated their interest and commitment to a structured dialogue facilitated by the Counsellor.

Without the company's commitment to proceed to the dialogue table, the Office closed the file in late September.

7. Summary Remarks

The Office's review process is a voluntary dialogue process designed to build trust and relationships between project-affected individuals, groups and communities and Canadian mining, oil and gas companies in their operations overseas. Being voluntary, it relies on the good faith of all the parties.

This request for review progressed into the "informal mediation" stage. During our involvement in the request, the Office learned of many issues - many of which are not matters of fact or statute, but rather of relationships and perspectives. The Counsellor's view is that these types of issues lend themselves well to the process we have established under the Office. The Counsellor believes it is to the benefit of Canadian companies to surface and resolve such issues in a good faith effort to build trust and relationships with directly-affected people overseas. The Counsellor believes that such dialogue forums, with bona fide project-affected people, are one way to minimize social risk.

The Counsellor believes that all the parties in this request would have benefitted significantly from participation in the structured dialogue, and that there was no substantive reason the Counsellor should not have been successful in fulfilling her mandate. The Office reiterated on numerous occasions its commitment to fostering the conditions and frameworks for a constructive, fair and reasonable dialogue process. The requesters committed in writing to constructive dialogue with the company upon entering into the process in April 2011 and reiterated that commitment on numerous occasions. The requesters have continually demonstrated their good faith throughout the process.

While it may not have been possible to ultimately reach an agreement under the auspices of the Office's structured dialogue, it is the Counsellor's view that this request had every reason to quickly proceed to structured dialogue, as it could have been expected to deliver value for all parties.

The Counsellor regrets that, in this case, she was unable to deliver on her mandate of bringing parties together in constructive dialogue. The good offices of the Counsellor remain available to the parties, should circumstances change in future.

Footnote

¹ A variety of documents provided to parties address this issue, including the Office's Cover Form, the Review Process Participant Guidance, Guidance Note #1 on Confidentiality and Transparency, and Guidance Note #2 for Canadian companies. Participants are also briefed on this during the process.

² Refer to the [Office's website](#).

³ "[Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework](#)".

⁴ The strategy is entitled "Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector", posted at www.csr.gc.ca.

⁵ The Office does not receive requests for review pertaining solely to the OECD Guidelines for Multinational Enterprises. The review mechanism for the OECD Guidelines remains with the Canadian National Contact Point. A protocol between Canada's NCP and the Office

governs how the two work together; it is posted on [our website](#).

⁶ Further information about the review process, including the rules of procedure, information brochure, and Participant Guide, are available on the [Office's website](#).

⁷ [The public correspondence is available on The Business and Human Rights Resource Centre](#).

⁸ A meeting scheduled for August 11, 2011 was to include an extensive discussion of the site visit observations and a discussion on mutually agreeable next steps. Advance documents were presented to Excellon's CEO in correspondence of August 5, 2011. The meeting was cancelled by the company on the evening of August 10. The Office asked that it be rescheduled, however it was not.

Date Modified: 2013-07-31