

## Global Affairs Canada

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### Interim report #1 Request for review #2012-03-ARG

**Accessible, Effective, Independent, Predictable, Responsive, Transparent**

The Office of the Extractive Sector Corporate Social Responsibility Counsellor  
Government of Canada

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

**Errors and omissions remain the responsibility of the Office**

August 2012

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#### About the Office of the Extractive Sector CSR Counsellor

The Office of the Extractive Sector CSR Counsellor is a new office, set up as part of the Government of Canada's corporate social responsibility strategy for the Canadian international mining, oil and gas sectors. The Office's Review Process provides an opportunity for resolving disputes, dialogue and effective problem-solving between a Canadian extractive company and people affected by the extractive project.

This report provides a short update of the request to date, and in particular clarification on the issues which form part of the request for review.

One of the Office's key guiding principles is Transparency. Implementation of this principle recognizes the distinction stakeholders have made between transparency of process and outcomes, which is to be encouraged and is deemed critical for the Office, and transparency of information, some of which may well need to be kept confidential in order to have the work proceed.

#### 1. Office backgrounder

The Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor is a resource that people can draw on to reduce and to constructively resolve conflict between project affected communities and Canadian extractive sector companies outside of Canada.

In March 2009, the Government of Canada announced a new Corporate Social Responsibility (CSR) Strategy for the Canadian international extractive sector (called "Building the Canadian Advantage").<sup>1</sup> The CSR Strategy seeks to improve the competitive advantage and reputation of Canada's extractive sector companies operating overseas by enhancing their ability to manage social and environmental risks. One of its goals is to help ensure that extractive operations minimize negative impacts while enhancing benefits to local communities.

The CSR Strategy is based on four integrated and complementary elements:

- Support for host-country capacity-building initiatives related to resource governance;
- Promotion of widely recognized international Corporate Social Responsibility performance guidelines;
- Support for the development of a Corporate Social Responsibility Centre for Excellence to develop and disseminate high-quality Corporate Social Responsibility tools and training to stakeholders; and
- Creation of an Extractive Sector Corporate Social Responsibility Counsellor to assist in the effective and impartial resolution of issues pertaining to the activities of Canadian companies abroad.

The Office of the Extractive Sector CSR Counsellor is part of this Government of Canada CSR Strategy. The Counsellor reports to, and acts as a special advisor to, the Minister of International Trade. The Counsellor has two roles – an advisory role, and a dispute resolution role. In fulfilling our dispute resolution role, the Office of the CSR Counsellor provides a new option for constructive resolution of disputes between Canadian mining, oil and gas companies and project-affected stakeholders outside of Canada.

Our problem-solving mechanism, called the Review Process, emphasizes dialogue and constructive dispute resolution. It is about people with different views and interests working together to find mutually acceptable solutions to resolve disputes or issues.

The Government of Canada has articulated its expectation that Canadian companies adhere to all local laws of the country of operations. The Government of Canada has long supported the OECD Guidelines for Multinational Enterprises. The CSR Strategy adds the Government of

Canada's endorsement to three additional widely accepted global guidelines, specifically for Canadian mining, oil and gas companies in their operations outside of Canada.

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. This included the construction of the Office's Review Process, which 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 Review Process rules of procedure and Participant Guide, are available on the Office's website.

## 2. About the Review Process

The Review Process is a voluntary dispute resolution mechanism – the objective is to foster dialogue and to create constructive paths forward for all parties. It is about people with different views and interests working together to find mutually acceptable solutions to resolve disputes or issues. There is a high degree of flexibility in the process for parties to seek ways to resolve their dispute constructively.

The Office of the Extractive Sector CSR Counsellor is a neutral third party in disputes between Canadian mining, oil and gas companies and project affected communities. This means that we help people find solutions, but we do not take sides.

In many cases, a neutral third party can help people work together better. The Office uses a well-established methodology called interest-based dispute resolution. This means that we work with the parties in uncovering what is important to the participants in reaching a solution (i.e. their "interests"). Examples of interests are: Concerns, hopes, expectations, assumptions, priorities, beliefs, fears, values.

The process is designed to assist participants, working in good faith, in reaching a mutually agreeable solution to issues. Since they have an active opportunity to shape the resolution, the outcome may be more durable or meet their needs better.

The steps in the Review Process are as follows:

Step 1: The Office receives a complete request for review.

Step 2: The Office notifies the other party within 24 hours and provides them with a copy of the request. Within 5 business days, the Office acknowledges receipt of the request to the author.

Step 3: The Office carries out an intake screening. This intake screening determines if the request meets the criteria as set out in the CSR Counsellor's legal mandate. The intake screening is not a judgment on the merits of the request or an assessment of the information contained in the request. The intake screening is completed within 40 business days.

Step 4: The Office works with the participants in facilitating communications and building trust. Typically, the Office carries out a situational assessment that involves a visit to the project site. This situational assessment is not a judgment on the merits of the complaint, or an assessment of the information contained in the request. This assessment is a way to determine if a constructive dialogue based approach is likely to be effective or appropriate.

Step 5: The Office and the parties can move to a more structured dialogue. This requires the written consent of the parties. The structured dialogue process lasts up to about 6 months and may be extended on agreement of the parties.

Optional: The parties may also agree to work with a formal mediator in resolving their dispute.

## 3. The request for review and clarification of the issues

The Office of the Extractive Sector CSR Counsellor received a complete request for review on July 9, 2012. The parties identified on the request for review are The Centre for Human Rights and Environment (CEDHA) and Fundacion Ciudadanos Independientes (FuCI). The responding party identified is McEwen Mining Inc., related to a project in Argentina. In accordance with the rules of procedure, the responding party was immediately notified by telephone and was forwarded a copy of the original request.

The Office acknowledged the request on July 10, 2012 and the request moved to Step 3 of the process.

The request passed the intake screening on July 25, 2012 and the Office advised all parties the same day. This intake screening determines if the request meets the criteria as set out in the CSR Counsellor's legal mandate. **The intake screening is not a judgment on the merits of the request or an assessment of the information contained in the request.**

Some issues raised in the request were outside of the Counsellor's mandate. In an effort to ensure that the process was able to move forward, and to publicly clarify the limitations of the mandate, the Office wrote to the requesters to clarify the issues that would form part of the request. In a letter dated August 9, 2012, the Office stated that the following issues mentioned in the request are outside of the Office's mandate and therefore are not subject to the Office's process:

1. Judicial processes unfolding in Argentina.
2. Interactions between the governments of Argentina and San Juan province and the company.

3. Disputes between local populations and the governments of Argentina and San Juan province.
4. Actions of the governments of Argentina and San Juan province.
5. Enforcement of laws in Argentina including the national Glacier Protection Act and the province of San Juan's Glacier Protection Act.
6. Activities of companies other than McEwen Mining Inc.
7. Violations of Canadian legal or regulatory authorities.

The letter further clarified that, while these issues are excluded from the process, the Office considers there to be potential opportunity for a constructive dialogue between the parties on issues directly related to the CSR Counsellor's mandate; for instance, some of the following issues raised in the request are connected to the voluntary performance standards in the CSR Counsellor's mandate and could be a basis for a constructive problem-solving approach:

- Appropriate due diligence procedures
- Impact assessment
- Impact minimization and mitigation plans
- Stakeholder inclusiveness
- Stakeholder engagement and communications

The requestors have agreed to the above limitations to the request.

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<sup>1</sup> For more information, visit [www.csr.gc.ca](http://www.csr.gc.ca).

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