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Chair

Mr. Kevin Sorenson

Standing Committee on Foreign Affairs and International Development

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● (0900)

[*English*]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): *Bonjour, chers collègues*.

This is the 39th meeting of the Standing Committee on Foreign Affairs and International Development, on Tuesday, November 17, 2009. Our orders of the day include a return to our committee's study of Bill C-300, an act respecting corporate accountability for the activities of mining, oil, or gas in developing countries.

As our witnesses on our first panel today, we have, from the Canada Pension Plan Investment Board, Ian Dale, the senior vice-president, communications and stakeholder relations, and Donald Raymond, senior vice-president, public market investments.

Welcome to you.

Also, from the Prospectors and Developers Association of Canada, we have Anthony Andrews, the executive director, and Bernarda Elizalde, the program director for sustainable development.

We also have Robert Wisner appearing as an individual.

I'm not certain if any or all of you have attended committee meetings before, but we look forward to your opening statements and then we'll move into different rounds of questions that the members of this committee may have for you.

Perhaps I'll just open up the invitation to Mr. Dale and we'll proceed from there.

Mr. Raymond.

Mr. Donald Raymond (Senior Vice-President, Public Market Investments, Canada Pension Plan Investment Board): Thank you very much, Mr. Chairman.

My name is Donald Raymond and I'm the senior vice-president of public market investments at the CPP Investment Board. I'm joined by my colleague Mr. Dale, senior vice-president of communications and stakeholder relations.

Thank you for the opportunity to speak to the committee on Bill C-300.

The CPP Investment Board was created by the federal and provincial governments in 1997, the result of comprehensive reforms to the CPP in the mid-1990s. These reforms were implemented following extensive public consultations with business, labour, senior organizations, and Canadians across the country.

Federal and provincial policy-makers established the CPP Investment Board as an independent professional investment management organization—accountable, yet arm's length from governments—responsible for investing the CPP contributions not needed to pay current benefits.

One of the main concerns expressed by Canadians in 1997, which persists today, is that governments would interfere with the investment decisions of the CPP fund. Our independence, established in the Canada Pension Plan Investment Board Act, addressed these concerns and has contributed to our success. Our long-term goal is to contribute to the financial strength of the CPP, arguably one of Canada's most important social programs, and to help sustain the future pensions of 17 million Canadian contributors and beneficiaries.

We have a high degree of accountability to the federal and provincial finance ministers, but the reformers of 1996-97 built important protections around the CPP fund and the CPP Investment Board. For example, the assets in the CPP fund are segregated from government assets and are not tax dollars, as they are contributed directly by employers and employees.

The mandate of the CPP Investment Board, as set out in the act, is simple and fundamental to all of its activities: to maximize the investment rate of return without undue risk of loss. Under the terms of the act we may engage in no other activities. In the pursuit of this very focused mandate we have taken a leadership role in the development and implementation of a policy on responsible investing. This policy articulates how we integrate environmental, social, and governance factors, also known as ESG factors, in how we invest, including Canadian companies in the extractive industries.

As you will hear, the proactive efforts of the CPP Investment Board parallel the intent of Bill C-300 and make its inclusion in the terms of the bill unnecessary. In addition, the bill provides for government ministers to direct investment decisions at the CPP Investment Board. This runs counter to the public policy intent of the federal-provincial reforms of the CPP in 1996-97. Also, because of the provisions of the act, the bill cannot come into force without the required consent of the provincial governments.

Accordingly, we respectfully request that Bill C-300 be amended by this committee in order to remove reference to and, more specifically, direction to the CPP Investment Board.

In considering our approach to responsible investing, it is important to understand the unusually long investment horizon of the CPP fund, which is being invested for decades and generations. While other investors measure their progress by quarter, we look at decades and the quarter century. Being a patient, long-term investor is relevant to our policy on responsible investing because ESG factors tend to play out over longer time horizons.

Secondly, to effectively deliver on our promise to help sustain the CPP, we invest in more than 2,900 public companies around the globe, including more than 600 in Canada. Of that number, approximately 400 are in the extractive industries. As a long-term owner and investor, we believe that responsible behaviour regarding environmental, social, and governance factors by these companies can have a positive influence on their long-term financial performance and therefore to our investment return.

In keeping with our mandate, we view the ESG factors only in terms of investment risk and return. Simply stated, it is in the best interests of the CPP fund when the companies in which we invest meet high standards of disclosure and performance on ESG issues. Our approach to ESG issues is guided by two important documents that have become powerful agents for change, not only for us, but for institutional investors around the world.

● (0905)

The first document is the "United Nations Principles for Responsible Investment". We contributed to the development of the UNPRI and were in the first group of signatories to this groundbreaking accord in 2006. I was privileged to represent the CPP Investment Board, and was the only Canadian investor involved in the development of this far-reaching initiative. I can report to you today that there are more than 500 signatories to the UN principles, representing more than $18 trillion in assets under management. Like our own policy on responsible investing, the UNPRI reflects the view that effective disclosure and management of ESG factors can positively contribute to the long-term financial performance of investments.

The UN principles are implemented through a collaborative approach coordinated by the UNPRI engagement clearing house, where we work with other global funds to engage companies on ESG issues. In January 2009 this group wrote to 130 companies that had voluntarily committed to standards of disclosure on human rights, labour, environment, and anti-corruption practices—part of the UN global compact.

The CPP Investment Board's own comprehensive policy on responsible investing predates but parallels the UNPRI. Framed by our mandate, this policy articulates how we address these important environmental, social, and governance issues in our investments. A copy of this policy has been provided to this committee.

The implementation of our policy on responsible investing takes a number of forms, including activities that proactively address issues identified by Bill C-300. The first activity is engagement. This involves communicating with the senior executives and board members of companies in which we invest, as well as regulators, industry associations, and other stakeholders.

Our direct engagement activities are highly focused. Most of the companies we select are Canadian. We concentrate on three areas: climate change, executive compensation, and extractive industries—oil and gas, and mining companies. We seek enhanced disclosure and transparency from these companies. Disclosure allows all investors to see and understand the potential risk posed by ESG issues. Disclosure of these risks is the first step to addressing them, and we encourage companies to adopt best practices in the management of ESG issues to improve financial performance.

In the past year we have engaged with Canadian and international companies operating in high-risk countries, including Burma, the Democratic Republic of Congo, and Guatemala, to encourage improved transparency and risk management strategies. It is important to note that this is our initiative, undertaken proactively in the best interests of the CPP fund. It is not in response to any government requirement or specific complaint from a third party.

Influencing corporate behaviour, as you know, takes time. Engagement is a long-term strategy, but one ideally suited to our long-term approach to investing.

Parallel to our engagement processes, we encourage the investment industry to produce enhanced research and analysis of environmental, social, and governance issues. This research from investment dealers and other research sources helps all investors integrate relevant ESG factors into their investment decisions.

Our policy on responsible investing also informs our voting on shareholder issues via our published proxy voting principles and guidelines. Proxy voting by large investors is effective in enhancing disclosure, transparency, and improved behaviour on environmental, social, and governance issues.

As owners we vote on proposals at public companies' annual and special meetings. Proxy voting allows us to engage with all public companies in our portfolio. In the course of the 2009 proxy voting season we participated in more than 3,000 shareholder meetings, including 555 here in Canada. That count includes companies in the mining and oil and gas industries, both Canadian and international.

We voted on nearly 18,000 agenda items. In 15% of those items we voted against management. We make these results public. A summary of our proxy voting activity is included in our 2009 report on responsible investing, and the results of all proxy votes appear on our website.

As a respected global investor, our actions are closely watched and our voice is heard, not only by the companies in which we invest, but by the broader investment community. We also work with other investors, and a relevant, collaborative approach is our participation in the extractive industries transparency initiative. The EITI brings together companies, investors, non-governmental organizations, and governments, including the Government of Canada. Its focus is on oil and gas and mining companies, precisely because they deal with a range of ESG issues that must be managed effectively for long-term financial performance.

● (0910)

Let me explain how this initiative works. Through the collaborative efforts of EITI signatories, more than 40 of the world's largest oil and gas and mining companies are now actively supporting better transparency in 29 candidate countries. Signatories commit to disclosure of company tax and royalty payments, as well as government revenues from oil and gas and mining. This is key to illuminating sources of corruption in those countries.

Our proactive approach and industry leadership have been recognized internationally. The Social Investment Organization of Canada acknowledged our policy on responsible investing and related engagement approach as positive examples of responsible investing activities. We have been cited by the UNPRI for our disclosure of proxy votes. Our policy on responsible investing and proxy voting principles and guidelines have been named as global best practices.

In summary, the CPP Investment Board was created by the federal and provincial governments to invest at arm's length from governments. Our mandate is to generate investment returns to help sustain the future pensions of 17 million Canadian contributors and beneficiaries. The terms of our legislation state that the act may not be amended without the consent of both federal and provincial governments.

Through our policy on responsible investing we have been recognized as a global leader for proactively addressing environmental, social, and governance issues. For these reasons we respectfully submit that Bill C-300 be amended to remove both reference and direction to the CPP Investment Board.

We appreciate the opportunity to appear before this committee today, and we look forward to answering your questions.

Thank you.

● (0915)

The Chair: Thank you very much, Mr. Raymond.

We'll move to Mr. Andrews.

Mr. Anthony Andrews (Executive Director, Prospectors and Developers Association of Canada): Thank you, Mr. Chairman. I appreciate the opportunity to be here today to talk about this important subject.

My name is Tony Andrews. I'm the executive director of the Prospectors and Developers Association of Canada. My colleague Bernarda Elizalde, before joining the PDAC, spent a number of years advising mining companies on how to apply CSR practices in Central and South America, so she has an interesting perspective to add to the discussion today.

The PDAC is a national association focused on mineral exploration. Our 7,000 members work all over the world and include a large number of junior exploration companies. The Canadian juniors lead the world in numbers of companies and proportion of total funds they raise and spend worldwide on exploration and development. They are small businesses dependent on the capital markets for raising funds. Normally, they do not avail themselves of debt capital from banks and financial institutions. Our members are world leaders in the financing and technical areas and also in the emerging field of CSR. However, we are still in the early stages of understanding CSR development, and there is much work that will be done. It's an evolving process.

I was a member of the advisory group of the CSR national round table process along with a member of our board of directors. The association publicly supported the advisory group report, with some commentary and recommendations. PDAC is in the business of creating leading practice. It has recently launched what we call e3 Plus. It's a comprehensive, online framework for responsible exploration, and stands for excellence in three areas: social responsibility, environmental stewardship, and health and safety. It has an information-educational component consisting of principles, a guidance document, and three comprehensive tool kits. This was launched in March of this year. It also has an accountability component, which is in development at present. This will consist of performance objectives, reporting guidelines, and a system of verification.

As we understand it, the issue before this committee is how to ensure two things: the continuous improvement in CSR practices, and the accountability of Canadian companies operating in developing countries. We believe that the most effective way of accomplishing this will be on the basis of a systematic, integrated approach that will involve a combination of both voluntary and mandatory mechanisms, basically similar to the recommendations of the national CSR round table advisory group report and the CSR strategy recently introduced by the Canadian government. In our opinion, the legislation proposed by BillC-300 would not contribute to the objectives of either improved CSR practice or accountability. In fact, it will pose significant risk to the Canadian industry.

Over the next few minutes I'm going to do three things: I'm going to review some key realities that define CSR at present; I'm going to measure these against the approach contemplated by Bill C-300; and I'm going to define what we feel are key opportunities for making progress in CSR performance and in accountability.

Here are some current realities about CSR. Over the past 15 years, the focus in public priorities has shifted from environmental issues to social issues and, most recently, to an emphasis on human rights and ethical practice. The mining industry has made significant progress with environmental and social issues. Social issues are much more complex, given that they are centred on human relations and human behaviour and complicated by different cultures, values, beliefs, perceptions, and needs—often competing needs.

Environmental matters lend themselves to a prescriptive regulatory regime. Matters of corporate social responsibility do not. Any standard or guidelines for CSR must be comprehensive enough to satisfy public expectations of corporate behaviour. At the same time, they must be scalable to the size and the nature of the company and the project as well as to the stage of exploration or development.

● (0920)

Standards must be flexible to accommodate the wide variety of geographical, cultural, and environmental circumstances where projects occur. The reality is that what will work at one site will not necessarily work at another, so the successful application of CSR will be based on the experience and judgment of industry managers at the site.

What is our level of understanding of CSR? Well, it's a relatively new phenomenon that is still being assimilated. It involves rapidly evolving expectations and uncertainty about how to deliver on those expectations. Until recently there were no comprehensive international guidelines that attempted to define for the exploration business what CSR is and how it should deliver on those expectations. E3 Plus, which I described before, is an attempt to accomplish this.

Most companies are trying to apply CSR. They believe that they are applying CSR, using common sense, oftentimes, and homegrown approaches, but they have nothing against which to benchmark their practices. Therefore, there is wide variability in the manner and approach of their applications. This is where guidelines and assistance to our members come into play.

It is not only about human rights. Human rights are central to the issue of CSR, but it is not only about human rights. CSR involves broad dimensions of social responsibility, environmental stewardship, and health and safety, all encompassed in government regulations, industry good practice, and international instruments and conventions. It's a very broad and complex area.

How many allegations have been made against Canadian mining companies? Research conducted this year by the Canadian Centre for the Study of Resource Conflict revealed that over the past ten years there have been a total of 171 alleged CSR violations by mining companies. These are reported from around the world and from all sources. About 50% of these allegations were reported by advocacy NGOs. Of the 171 allegations, 56 involved Canadian companies. That is an average of fewer than six alleged cases a year.

Since its inception in 2000, the IFC compliance advisor ombudsman, the CAO, has received and processed a total of 110 complaints. Of these, there were eight complaints involving four mining companies. Of these, one was Canadian and another was partly Canadian owned.

I'll just add that as of June 2008, just prior to the global financial crisis, there were about 1,000 Canadian companies working in over 100 countries on 5,000 projects outside Canada. I think those numbers put this into context.

Given these realities, how does Bill C-300 measure up as a practical, effective system of applying accountability? It is an investigative, punitive system based on assigning blame and imposing sanctions. It will be dependent on the difficult process of collecting evidence in foreign jurisdictions. It will try to discriminate between right and wrong.

How can this approach be rationalized in a situation that is so fluid and variable and that is complicated by differing cultures, beliefs, perceptions, and needs? How will companies be judged against a set of guidelines that will need to be scalable and flexible? How will companies know where the boundaries of compliance are? How will the minister determine whether a contravention has occurred? Why would we introduce such a negative, high-risk approach in a situation that cries out for information, education, and assistance and that involves so few cases of proven intent to harm? Why would we introduce such a punitive approach prior to the establishment of fundamental definitions, basic information, and clarity of expectations?

These are fundamental problems that cannot be corrected through the artful rewriting or amending of Bill C-300. There are additional significant legal issues with the bill, which I'm sure my colleague, Mr. Wisner, is going to describe.

● (0925)

Canadian mining companies are already accountable in many different ways and on many different levels, but we believe there are some areas where accountability can be improved. The first and most important one is host country governance capacity-building. This is a highly significant area. This is the seat of accountability for Canadian companies and it lies with the host government where they are working. So attention and resources should be focused on governance capacity-building in those countries where governance is a critical issue.

The second area I would suggest we have a look at is access to capital and strengthening the requirements in securities regulations around materiality. This is related to disclosure and reporting of CSR matters to investors and the public.

Significant improvements for industry need to occur in the area of due diligence and risk assessment, as well as community engagement. That's our own assessment. This will contribute to accountability as preventative mechanisms.

Finally, applying the fundamental building blocks of accountability to industry good practice guidance makes a lot of sense to us. This includes performance measures, reporting requirements, an ombudsman function to take care of a grievance, and a form of verification. To us, the advantage of this kind of approach is that it's focused on the preventive, it helps companies perform better, it's broad in scope so it will capture a large part of the industry, and it's upfront and integrated into the business practice.

Thank you very much, Mr. Chairman.

The Chair: Thank you, Mr. Andrews.

Mr. Wisner.

Mr. Robert Wisner (Partner, McMillan LLP): Thank you.

[*Translation*]

Members of the committee, it is a great honour to appear before you today to talk about the legal problems that Bill C-300 causes.

[*English*]

The international law and fairness issues that I will discuss today are set out in more detail in a written submission that we prepared at the request of the PDAC that and will be distributed to members of this committee later this week.

From my perspective as an international lawyer, Bill C-300 will do more harm than good to the worthwhile causes that it seeks to promote. That's because it suffers from three fundamental legal flaws that cannot be remedied by minor amendments.

First, the bill will hamstring the ability of the Canadian government to promote Canadian values abroad because it will be seen by developing countries as an interference into areas that are their exclusive jurisdiction under international law.

Second, the obligations in the bill are so vague that they will create a high degree of legal uncertainty for Canadian mining, oil, and gas companies.

Third, the bill lacks guarantees for even a minimum level of procedural fairness for the companies that will be accused of wrongdoing. That is a problem that, as I will explain, is inherent in a private member's bill, which cannot allocate funds to provide the necessary level of procedural fairness. This uncertainty and lack of procedural fairness will deter even the most responsible Canadian companies from investing abroad. That deterrence of foreign investment harms not only the Canadian economy, but developing countries as well.

Let me begin with how the bill will make it harder for the Canadian government to promote Canadian values abroad.

It's important to understand here that the issue is not one of voluntary or mandatory standards. The voluntary CSR guidelines that PDAC and other groups have developed are intended to complement rather than substitute for mandatory legal standards. Rather, the issue is about who should decide what the mandatory legal requirements should be. Should it be the governments of the states where the activities are actually taking place, or should it be a government thousands of miles away?

The underlying assumption behind Bill C-300 is that all developing countries, as they are defined in the bill, suffer from a legal void in terms of environmental, labour, or human rights rules. That assumption is simply incorrect. As you'll see in my written submission, every relevant jurisdiction for Canadian mining companies has detailed laws and regulations to hold corporations accountable in these areas, laws that are usually drafted with the help of UN agencies or international financial institutions.

What proponents of Bill C-300 are really doing is asking the Government of Canada to pass judgment on how other countries are enforcing their own laws. At the same time, Bill C-300 doesn't distinguish between governments that have the capacity to enforce their own laws and those that don't. So for example, in testimony before this committee that I've seen, disputes in democracies such as Chile and Argentina have been lumped together with disputes in conflict zones that are emerging from civil war.

We all agree that some developing countries could benefit from assistance in building their enforcement capacities, which is something the Canadian government has agreed to provide them with. The question, however, is whether we should ignore a developing country's own enforcement decisions simply because of Canadian ownership of a corporation in its territory. Under international law the answer to that question is no. With limited exceptions, Canada's Parliament and its government agencies cannot exercise jurisdiction outside of Canadian territory. These limits arise from the very foundation of the international legal order, which is respect for state sovereignty.

On other occasions, I've heard Mr. McKay suggest that Bill C-300 avoids any extraterritorial jurisdiction because it merely imposes conditions on Canadian government assistance. If this were so, the bill would be redundant, because as you've heard this morning, CPP and other government agencies do set conditions and do screen the assistance that they provide, but the heart of this bill sets standards and calls for investigations of companies that may not receive a single penny of government assistance. Furthermore, these companies do not even meet the definition of a Canadian company under international law.

● (0930)

Bill C-300's violation of international law is exactly the same as what Canada protested when the United States tried to regulate Canadian subsidiaries of U.S. companies that trade with Cuba. We even passed laws, under the Foreign Extraterritorial Measures Act, blocking these companies from complying with those directions.

Imagine, if you will, what would happen if the Minister of Foreign Affairs of Brazil or his representative were to show up in Canada one day, start examining witnesses in Sudbury, for example, hold hearings there, and then put pressure on a Brazilian shareholder of a Canadian mining company to close his operations because they don't comply with that minister's view of appropriate environmental standards. I don't think Canadians would view that as an appropriate exercise of Brazil's jurisdiction.

This breach of international law will make the promotion of human rights and the environment by our own diplomats much more difficult. It will be hard for us to be listened to if we're seen as being selective in our own application of international law.

Let me turn to some of the specific problems with the way the bill imposes rules on Canadian mining, oil, or gas companies. Bill C-300 doesn't actually set out what those rules are going to be. Rather, it directs the ministers to develop standards based on two types of documents.

First, you have more than 260 pages of voluntary guidelines that cover just about every aspect of corporate conduct. Now, these are valuable and important documents, but they were not drafted with the intention of being binding legal rules. They were supposed to be guidelines that help management make better business decisions. That means they're not written in accordance with legislative conventions and they lack the clarity and specificity that you normally see in legislation.

To give you an example of this, it's like the difference between a manual on safe driving put out by a driving school and the Highway Traffic Act. The manual on safe driving is a very useful, important document, and it helps people to be better drivers, but it won't have the clear rules and definitions that you usually see when legal penalties are being applied.

The second set of documents incorporated into the bill is made up of international human rights conventions to which Canada is a party. These rules are indeed binding legal rules, but they're designed to be binding on states, not on private persons. As a result, they have no clear meaning when they are applied to corporations. It's as if, overnight, the Canadian Charter of Rights was extended from governments to private citizens. If that happened, there would be a great deal of uncertainty as to what exactly was the meaning of the obligations that were being imposed.

When you take standards that are designed for one purpose and simply transpose them into another area, you raise a whole host of questions about their meaning. This bill therefore makes every Canadian mining, oil, and gas corporation operating in developing countries, no matter how responsibly run, a target for costly and unpredictable investigations.

Finally, because it is a private member's bill and cannot create any new offices, the bill lacks the procedural fairness safeguards that must accompany any ministerial investigation into alleged wrong-doing. For example, in the Canadian Human Rights Act, we create a Human Rights Commission to examine complaints, and then an independent Canadian Human Rights Tribunal to hold hearings into whether standards have been violated. Bill C-300 is completely silent on all of these elements of procedural fairness, because including those in the bill would render it out of order.

Having said that, I note that even if this type of administrative tribunal were created, it would still expose Canadian companies to the stigma of government investigations and second-guess good faith decisions by Canadian agencies and diplomats. This is completely different from the non-governmental bodies that were recommended by the advisory group report following the national round tables on corporate social responsibility.

● (0935)

We've already had some experience with this type of plaintiff diplomacy, and it hasn't worked very well. A Canadian company, Talisman, was sued in the United States based on nothing more than the fact that it paid royalties to the Government of Sudan and upgraded infrastructure. After several years of litigation, that complaint was thrown out of court because of lack of evidence. By that time, the damage was already done. After enduring the adverse publicity generated by the legal complaint, Talisman sold its interests. The ultimate dismissal of the complaint went virtually unnoticed by the media and the cause of corporate social responsibility was hardly advanced by the new owners.

Bill C-300 creates very similar risks. Indeed, witnesses appearing before this committee have already alleged that simply by paying royalties to bad governments or by building roads that can be used by government forces, Canadian companies are committing human rights violations abroad. If this is a standard to be applied, no Canadian company can avoid being investigated, and that will mean that many worthwhile projects will not go forward. That's not just bad for Canada, it's bad for developing countries as well.

Thank you.

The Chair: Thank you, Mr. Wisner.

We'll move into the first round. Mr. Patry and Mr. Rae.

[*Translation*]

Mr. Bernard Patry (Pierrefonds—Dollard, Lib.): Thank you.

Thanks also to our guests.

Mr. Raymond, the committee notes your recommendations on Bill C-300, An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries, including the one about removing the reference to yourselves. I read your 2009 report on responsible investing. In your opening remarks today, you tell us that you intervened last year specifically in Guatemala, Burma, and the Democratic Republic of Congo. Your words were: "[...] to encourage improved transparency and risk management strategies."

Mr. Raymond, can you provide the committee with copies of those letters as well as the responses from the companies, if any, and tell us if you have done any follow-up with those mining companies? I would like to know who does this follow-up, how it is done, if the companies move forward, and, if not, what you see as the next step.

[*English*]

The Chair: Thank you, Mr. Patry.

Mr. Raymond.

Mr. Donald Raymond: I think the most important thing to note about our engagement practices, as I stated in my opening remarks, is that this is a long-term strategy. We don't necessarily get results immediately. We have a team dedicated to engagement within the CPP Investment Board in my department that do follow up with companies and ensure that they are moving forward with higher levels of disclosure for all investors to see what their practices are.

Mr. Ian Dale (Senior Vice-President, Communications and Stakeholder Relations, Canada Pension Plan Investment Board): Mr. Chairman, if I could just add, just to answer the member's question, you can see on our website how we would have voted on shareholder proposals, and all that is disclosed on the website. I will reiterate my colleague's point. By ourselves we may not have a significant amount of influence. But one of the things that we do is work with coalitions of other investors. When companies might have their top 10 shareholders knocking on their door asking for increased disclosure, that tends to create action and movement to address these issues.

● (0940)

The Chair: Thank you, Mr. Dale.

Mr. Bernard Patry: I just wanted to add to this. First of all, I will ask you some questions.

Do you agree to submit to the committee the letters that you sent to these companies and the response, if there was any, from these companies?

Now, Mr. Dale just pinpointed the website. On the website, I can see all your votes and some things like this, but it's nothing really. You vote against the nomination of some people. You say a lot of things. It's really on the business side of the view that you're voting against. We talk about the environment, social, and good governance. This is the idea of Bill C-300, and I would like to get some answer on this Bill C-300.

Now, you say that you're looking at what's happened over there, but how do you do it? Who gave you the response over there? If a company in Guatemala.... There are not that many companies in Guatemala. Do you know which company you're thinking about? What are you doing in Guatemala?

I want to have some real answers about this, not just to say to go on a website. A website is not sufficient for me.

The Chair: Mr. Patry, are you asking for the letters that they've sent to those companies, to disclose them and now—

Mr. Bernard Patry: Yes, sure. I want to get the letters, yes. They can disclose it. It's public.

The Chair: Mr. Dale.

Mr. Ian Dale: Okay, thank you. I'd be pleased to answer that question.

I think we engage with companies in three ways. We talked about proxy voting. I think the most powerful one has to do with coalitions of other investors. We also do direct engagement with companies. With regard to mining companies, if there is an engagement with a company that is ongoing, while that discussion is ongoing we don't disclose the nature of that conversation. But if it is not going the way we would want it, we reserve the right to do that. There are a number of instances when we have disclosed those letters with some Canadian mining companies. We could share those with the committee.

The Chair: Thank you, Mr. Dale.

Go ahead, Mr. Rae.

Hon. Bob Rae (Toronto Centre, Lib.): To our guests from the CPP, just to clarify, would you object to the idea that the findings of the minister, as set out in section 4 of the act, could be referred to the investment board as information relevant to your own social responsibility activities? You wouldn't want to ignore a report from the minister that was clear.

I can understand the problem with the wording in section 10, but I'm still trying to see whether there isn't a way of simply indicating a common sense function, which would be that you would obviously take into account a finding by the minister of a flagrant breach of the guidelines as set out in the act.

Mr. Ian Dale: Thank you, Mr. Chairman. I'd be pleased to answer that.

Obviously I don't think we would ignore such a determination, but we look at this really in two ways.

What we hope to show the committee here this morning is that we do look at environmental, social, and governance factors. They are integrated into our investment process, we do that for investment reasons, and it's consistent with our mandate.

Our challenge with the legislation is that it would create a precedent that would give a minister of one government the power to direct how investment decisions are made, which is counter to the public policy intent of the CPP reforms and how we were set up.

Hon. Bob Rae: I understand that.

Let's assume that we accept that argument or that perspective with respect to the independence of the CPP, but precisely because you've already indicated that you take corporate social responsibility seriously, how could you object to the minister's simply sending you a copy of a report and indicating that this is something you should take into account—not necessary follow, but take into account—in the decisions you make? Why would that be objectionable?

Mr. Donald Raymond: As I said, an independent research group within my department looks at these factors, so to the extent that there was information in there that they thought was relevant from an investment perspective, I think we would welcome that information.

● (0945)

Mr. Ian Dale: As well, Mr. Chairman, there are a variety of inputs that we use. We have, as Don mentioned, an internal research function, we use external research providers, and we have discussions with NGO groups. We use a variety of inputs, but again it's just making a judgment on a risk-return basis.

The Chair: Thank you, Mr. Dale.

Go ahead, Madame Bourgeois.

[*Translation*]

Ms. Diane Bourgeois (Terrebonne—Blainville, BQ): Thank you, Mr. Chair.

Good morning, ladies and gentlemen. Thank you for being with us today.

Your testimony makes me think that this question of Canadian responsibility is being dealt with rather haphazardly.

Mr. Raymond, of course you were congratulated for your policies on responsible investing. But I feel that you have not been applying those policies for a long time. If that whole question about Canadian investment in Burma had not come up, we would not have known that you had policies on responsible investment.

I have been following this file for several years. Until recently, we never knew that the Canada Pension Plan had invested money in Canadian mining companies that were systematically violating human rights. Now it seems that you have made extraordinary progress in bringing those companies to the realization that they have to pay attention to human rights. I am truly astonished by that.

I would say that you also have a responsibility to those who contribute to the Canada Pension Plan. I am extremely disappointed to see that your responsibility is primarily aligned with your desire to make money.

Have you done studies to determine the extent to which it could be to Canadians' financial advantage to pay into a pension plan that would in turn invest in mining companies that respect both the environment and human rights?

[*English*]

Mr. Donald Raymond: Mr. Chairman, I would be happy to respond to some of the comments.

First of all, the CPP Investment Board is a relatively young organization. I joined in 2001 and there were 12 people. This has been an evolutionary process in building out our capabilities. We had a socially responsible investing policy when I joined and then as a result of us actually taking quite a leadership role within Canada, and even internationally with working with the UN to develop the United Nations principles, we actually have been a leader in Canada in developing responsible investing policies. We are very concerned about these issues, in large part because we believe that companies that perform well on environmental, social, and governance issues tend to make better investments over the long run. So in this regard our interests are very much aligned with the interests of Bill C-300.

We do, as the member pointed out, take this from an investment risk and return perspective, and that's required by the Canada Pension Plan Investment Board Act. In fact, it states quite clearly our objective is to maximize return without undue risk of loss, and furthermore that we cannot undertake any other inconsistent activities. It's a very fundamental investment premise that screening companies, in other words removing companies from your possible set of investments, will either increase risk or reduce return. On that basis, we believe that screening—in fact many NGOs and others in the social investment arena would agree with this statement—is less effective than engagement with companies, because when you sell a company, when you sell their shares in the first case you're selling them to someone else, so it doesn't actually affect the company at all, and secondly you lose the right to have any voice with the company.

[*Translation*]

Ms. Diane Bourgeois: Thank you.

Mr. Andrews and Mr. Wisner, it seems to me that you are not on the same wavelength. Mr. Andrews, you say that we must do more to build host country governance capacity whereas you, Mr. Wisner, say that doing so would be interference on Canada's part.

Mr. Wisner, I would have preferred to have your presentation in writing. The material you presented to us was quite technical.

Then you tell us that the countries in which Canadian companies invest have laws on human rights and on organized labour. I feel that we are really not on the same planet.

● (0950)

Mr. Robert Wisner: First of all, let me try to answer your question about the translation. I do apologize. There is a written text, but it is still being translated. I have been told that a copy will be distributed to the members of the committee by the weekend.

[*English*]

I'll speak in English because I'm going to refer back to my notes.

As I made it clear, I don't believe there's any contradiction at all between the remarks that I presented and Mr. Andrews' remarks. We both agree that host countries' governance capacity can be improved. So we're both on exactly the same page as far as that goes.

I did not suggest that giving countries assistance to enforce their own laws is somehow a violation of their sovereignty. On the contrary, I encourage the Canadian government to continue to pursue that policy, which they have set out to do. My comments were that Bill C-300 does not actually provide them with assistance to increase their governance capacity. It couldn't do that as a private member's bill, as it can't allocate the funds. What Bill C-300 tries to do is something else, which is it tries to actually set laws that apply in other countries, and that is a different thing.

In terms of whether I live on the same planet as everybody else, there was a distinction in my remarks between laws and the degree to which they are enforced. In terms of the laws, I can refer you to a survey, and it's referred to in my written submission, on 32 jurisdictions around the world. It's a summary of their laws, including many countries in Africa and poorer countries. It describes the detailed laws, including environmental, labour, and other standards, that are applied in those countries. Now, there is a distinction, as I mentioned, between the laws in the books and the degree to which the government officials have the technical capacity, political ability, and financial ability to enforce those laws. If that is what the issue is, the solution to it is to provide them with the assistance to do that.

The Chair: Thank you.

We'll go to Mr. Goldring.

Mr. Peter Goldring (Edmonton East, CPC): I want to make a comment on Mr. Rae's earlier comments that it appears the Canada Pension Plan could consider the provisos in this bill when it does forms of investment. With that, I just want to point out that the way I am reading this, it is not a suggestive bill, it's an instructive bill. When we look at section 10 here, it's very clear that it's not only "shall take into consideration the provisions", but it "...shall ensure that the assets are not invested...whose activities have been found...to be inconsistent with the guidelines...".

So it is absolutely not suggestive; it's instructive. And that creates huge problems, I would imagine, because then you have to determine whether that corporation is in compliance or not.

And furthermore, when we go back to the issues under the other instructions on the bills, where the corporations have a determination of frivolous or vexatious responses within eight months, the minister has to provide reasons for this determination and publish these reasons. So there is even a reverse onus on the minister to not only give clarity to whether a company is in contravention, but also to publish reasons for that clarity. I would think that in itself would be very onerous to try to do.

Mr. Andrews, within eight months you might have some frivolous and vexatious accusations. What happens to a business in an eight-month period? And is that enough time for a business to determine whether they just want to fold? You related one example of one business that gave up the ghost on it. How many other businesses are going to decide—let's say the Canada Steamship Lines of the Canadian mining industry—to pick up their tools and relocate to Barbados? How much of this impact is there going to be on the Canadian mining industry?

● (0955)

The Chair: Mr. Andrews.

Mr. Anthony Andrews: Thank you, Mr. Chairman.

We have heard from some of our members that they consider Bill C-300 serious enough that they would contemplate relocating their head offices elsewhere if this comes into law.

Mr. Peter Goldring: Barbados.

That certainly should be a concern for everybody. And if that isn't enough of a concern, we also have the implication here that the corporations subscribe to all the international laws and all laws of various countries that even the Canadian government has difficulty subscribing to for various reasons. But to compel corporations to subscribe to laws that even the Canadian government doesn't subscribe to, doesn't that pose a huge complication as well?

Mr. Anthony Andrews: I think it does. But I think a much more complicated issue is how are you going to conduct an investigation and hold companies in compliance with respect to guidelines in situations that are very flexible and change from one site to another? That's the most difficult situation I can imagine with this Bill C-300.

People need to recognize that companies are held accountable on a number of different levels. You can start with the international laws, agreements, and conventions that exist, the financial institutions, and the equator principles that I know everybody around here is familiar with.

We've been talking about host country governance laws and regulations. Regional and municipal governments hold companies accountable where they operate. Local communities hold companies accountable as well.

If a local community is objecting to your project—you have not brought them along with it—they can slow it down very seriously. They can force you to walk away from your project. Communities have this power. They hold companies accountable, and there have been examples of this.

And finally, there are investors. Investors hold companies accountable as well. If, for instance, a company doesn't do its community engagement properly and there are delays to the project or the company has to walk away from it, the investors will punish the company through withdrawal of investor loyalty and their share prices will drop significantly. That's what I call accountability.

These companies are accountable on many different levels.

Mr. Peter Goldring: With regard to the commentary from the Canada Pension Plan of removing from the bill all references to them, is it fair to say that really there's more of a systemic problem with the bill, that it's much more than that?

I mean, certainly one might say that you amend it by removing references to CPP, but really there are more systemic problems with this bill, throughout it, that are problematic to industry, problematic to our understanding of our Charter of Rights and Freedoms and our corporate responsibility. There are problems all the way through this bill.

Mr. Anthony Andrews: I absolutely agree with that. There are systemic problems. For that reason, we don't think it's amendable. It's like cutting an apple open, seeing a big bruise, trying to cut that out, seeing another one under it, cutting that one out, and then realizing that you have nothing left.

Our biggest issue with this bill is the fact that it's an investigative punitive process. It's an investigation that will be conducted by the Government of Canada, the most senior representative of the Government of Canada, and there will be immediate reputational damage to any company that comes under investigation, even if they are innocent. This can have all kinds of repercussions, in particular in the host country.

● (1000)

Mr. Peter Goldring: So to be charitable, trying to do the right thing—we all do have an interest in doing the right thing, as citizens of the world—but using a sledgehammer to drive a thumbtack, you're going to hurt your own fingers.

Mr. Anthony Andrews: I think so.

If you want to add a level of accountability that does make some sense, I think the ombudsman approach is a good approach. This was the approach that was suggested by the CSR round table advisory committee group. A collaborative approach that looks at a situation, including all parties and not just a single party, and tries to make resolution of that dispute, I think is a very constructive approach. It will add some benefits.

The Chair: Thank you, Mr. Andrews.

Mr. Dewar.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, Chair.

I note that the last comments made by your witness were not heeded by the government. In fact, there was a request from many to put in place an ombudsperson. But I won't dwell on that.

I want to start with questions to our friends from the CPP.

In terms of the collective investments of CPP, are there are still holdings in Ivanhoe, in TransCanada, in Canadian Helicopters? Are we still investing, or is the CPP still investing in those corporations?

Mr. Ian Dale: Two of those three.

Mr. Paul Dewar: Which two?

Mr. Ian Dale: I could tell you a story, actually, to get back to the other member's—

Mr. Paul Dewar: Perhaps I could just get the answer. I have a very little amount of time.

Mr. Ian Dale: All right.

It's not in CHC, and I'll tell you why. It's an example of engagement. Last year, in conjunction with another investor, we looked at making a significant investment in Canadian Helicopters that had a very small part of their operation in Burma. It was looked at through the due diligence process, and through that process it was determined that the risk of operating that business was not worth pursuing it. So the company and the investors withdrew their operations from Burma.

Mr. Paul Dewar: Right. But if we could go back in time, when CPP first invested in those portfolios, were they aware that there was business being done in Burma? Had you screened the investment as to whether or not they were investing in Burma?

Mr. Donald Raymond: First of all, it's important to recognize that from a large global investors perspective, we invest with a policy of diversification that includes, as I said, 2,900 companies. We're not selecting each individual company.

You can think of it as getting passive exposure, just as one would in the Canadian equity market investing in the TSX 60, where you own exposure to each of the underlying 60 companies. We do the same thing with companies around the world, including emerging markets. That's part of our overall diversification strategy.

As a result of that—

Mr. Paul Dewar: So is that no or yes?

Mr. Paul Dewar: My question was, were you aware of the fact that these companies were involved and had investments in Burma?

Mr. Paul Dewar: Yes, you were? Okay.

I'm trying to lay out the fact that these Canadian investments and pension funds were investing in Burma, in some cases a 50-50 split of assets with the junta, where there was a clear determination by the government to actually have Canadian companies withdraw investments, quite rightly, through SEMA—not existing investments, and that was something I was hoping they'd go further with.

I mention that because there was an indication that screening isn't something we should do, and I would lay out that example as something that probably most Canadians, if they were aware that this was happening.... And certainly many Canadians became aware, and it took a brutal crackdown by a repugnant regime for Canadians to become aware of it. What we're trying to do here is lay out fair rules so that everyone is going to be aware of what the responsibilities are.

And I have to say that some of the things that have been laid out here, as if we are going in to tell people how to conduct their affairs.... Yes, you can lay out that argument, but many have disagreed. We've heard lawyers come forward and entirely disagree, with all due respect, with what we've heard today.

What we're trying to do here is ensure that in cases like I've just laid out, there are clear responsibilities, clear rules, and that the good work that has been done by various people around this table is going to be furthered, and to an extent that, when there are concerns about Canadian companies abroad, there's a manner in which we can deal with them.

You've just laid out for me the reasons why we should have this. It wasn't, quite frankly, until the government invoked SEMA that CPP was really forced to do what it has done. I know you might disagree with that, but I'm stating that because we've heard from you and I'm just laying it out.

One of the things that concerns me—and I turn to our other witnesses—is the fact that we've had other jurisdictions do this. We've had jurisdictions say, "You know, when it comes to our country's brand abroad, we want our companies to perform in a certain way". In fact, Norway has put in certain provisions on standards, in terms of their pension funds.

I'm very concerned that you think if this bill passes you're going to instruct people not to invest in Canada. That worries me, but that's your right to do so. It says that we have eight months or more to figure out regulations. How is this bill going to stranglehold anyone who's doing the right thing? There is a process here; it isn't going into a country and saying "Thou must do this". There is a process to say that our Canadian companies who are performing in these countries have to abide by certain standards. What are you afraid of here?

● (1005)

The Chair: Mr. Andrews.

Mr. Anthony Andrews: Thank you.

First of all, my organization is not going to recommend that a company pull out of Canada. That's a decision they will make on their own.

Mr. Paul Dewar: No, I thought I heard you say something otherwise.

Mr. Anthony Andrews: No, I just wanted to correct that.

Mr. Paul Dewar: I'm glad to hear that.

Mr. Anthony Andrews: Good.

So no, we want our companies to act responsibly wherever they work. But this particular bill will bring with it some very significant risks in terms of the fact that it is a government that's investigating. There's a very significant stigma that goes along with that and that will place immediate risk on the company in the host country. Even if it's innocent, it will suffer that risk, and this kind of process will become very litigious.

Mr. Paul Dewar: But that's happening now, is it not, in terms of —

The Chair: Your time, Mr. Dewar, is about 30 seconds.

Mr. Paul Dewar: I'll use it. Thank you, Chair.

Right now we have court cases. We just had one in Mexico, where a Canadian company, New Gold, didn't abide by what was asked for. They've now finally had their licence suspended, when they were supposed to abide by it since 2005. There's litigation all over the place. So to say there's going to be no litigation with Bill C-300, I think not. In fact, I've said before that we need to protect ourselves from litigation, and this is the way to do it. We might disagree.

The Chair: That's it for the time.

I'll go to Mr. Lunney.

Mr. James Lunney (Nanaimo—Alberni, CPC): Thank you, Mr. Chair.

First, I want to say about CPP and your response as an investor in advancing CSR and ESG principles, an excellent presentation there. I've been reviewing your report on CSR, and I would like to pursue that a little further, but I have a question first that I want to get on the table. If I have time, I'll come back to a question I have for you.

Mr. Wisner, as a legal expert in international law, you had raised the issue of procedural fairness. I wanted to ask you about one of the clauses in the bill that directs the minister to receive complaints regarding Canadian companies engaged in mining, oil, and gas activities from any Canadian citizen or permanent resident, or any resident or a citizen of a developing country in which such activities have occurred or are occurring.

Now, that's a clause in the bill. I'm wondering, does this not suggest to you that complaints could come from not only any Canadian citizen, but from residents of foreign states, including some that aren't even residents or involved directly in the country involved? Or they could come from competing companies that perhaps might raise complaints about a competitor. Does this kind of a concern—asking a minister to direct this—raise the possibilities for abuse that would cause a lot of negative publicity for a company and a lot of confidence shaking in terms of their ability to invest? I just want your take on that if you would.

● (1010)

Mr. Robert Wisner: That is absolutely right. It's one of many provisions in the bill—which I did not have enough time to address in my comments—that is drafted in a very broad and ambiguous way.

In most statutes there's some kind of requirement that someone who files a complaint somehow be affected in some way by the activity that is being complained about. This bill gives standing to people who have no direct interest in any of these matters. They can be any resident of Canada or any member of the developing country where activities are taking place, and even if they're not close to the project or are not affected in any kind of direct way by the project, for whatever reason they can file a complaint and that complaint must be reviewed and assessed and investigated by the minister.

The threshold for deciding whether an investigation must occur is set very low under this bill. As a result, any cleverly crafted complaint that simply meets a bare prima facie test—as it's called in legal language—can trigger a ministerial investigation, and that investigation is public. That becomes known in the host government and will immediately raise issues about the permits that the company has and their ability to obtain necessary permits. It will raise issues in Canadian capital markets. It will dry up financing long before the actual decision by the minister is rendered.

The Chair: Thank you.

Mr. Dale, did you want to comment on that?

Mr. Ian Dale: Just to return to Mr. Dewar's question about SEMA.

Clearly, as my colleague, Mr. Raymond, pointed out, our policy on responsible investing, similar to the UN principles, came into effect in 2005 and 2006. This was really a sea change in the way investment organizations around the world looked at these kinds of issues. So we were concerned about them back to that date, and it wasn't specific to SEMA.

The Chair: Thank you, Mr. Dale.

Mr. Lunney.

Mr. James Lunney: Thank you.

I wanted to suggest that I think it's very commendable that CPP has engaged in the process. I understand you're involved in helping develop the UN principles on responsible investment and you're collaborating with a whole range of other institutes. This whole field is a developing field of engagement over the last decade.

I wanted to ask for your comment about the movement by the Canadian government. We have a national contact point. We're engaging with the OECD guidelines. You've mentioned others, like the equator principles that are in place. But there's a new role of a CSR counsellor that is being engaged to help in measuring these things. It doesn't provide obligations to CPP.

I just wondered if you'd comment on the role of a CSR counsellor. Mr. Dewar talked about an ombudsman, and we're calling it a counsellor; it's just something else in this role. I'd like your comment on whether this will help.

Mr. Donald Raymond: I'd just highlight that there are a range of principles that are designed to operate at the corporate level and certain ones that are designed to operate at the investor level. I'm not that familiar with this; I'm guessing it operates at the corporate level. Things like the UN PRI and the extractive industries transparency initiative, those things operate at the investor level.

The Chair: Thank you, Mr. Raymond.

Mr. McKay.

Hon. John McKay (Scarborough—Guildwood, Lib.): Thank you, Chair.

Thank you, witnesses.

I wanted to ask CPPIB questions with respect to some of your investments here. There's Banro Corporation in the Democratic Republic of Congo. You have $351 million in the Bulyanhulu gold mine in Tanzania. There are other investments here, also in the DRC. You have an investment in the Veladero mine in Argentina, where Argentina's national ombudsman called for a halt to the company's operations, and apparently you continue. EDC has money in that and CPP has money in that. In New Guinea, you have considerable investment. And Norway's government pension fund dropped its shares in the company as a result of waste disposal practices. Based on an in-depth analysis of the operations, the pension fund's council on ethics concluded that the investment amounted to an unacceptable risk of the fund contributing to “serious environmental damage”. The council added that the company's assertions that its operations do not cause long-term and irreversible environmental damage carry little credibility.

I was curious, Mr. Raymond, how CPPIB continues to make these investments when others have found these investments to be in breach of various environmental and human rights standards.

● (1015)

Mr. Donald Raymond: Sure. Let me start by highlighting some of the important differences between the Norwegian petroleum fund and the CPP fund. First of all, the Norwegian fund is derived from government oil royalties and revenues and is essentially government money, whereas the fund that we manage is not government money. It is owned by Canadian contributors and beneficiaries, as employers.

Hon. John McKay: I'm not sure how that's a distinction with a difference. Surely, Canadians are as interested in how their funds are handled ethically as is the Government of Canada, or the Government of Norway for that matter.

Mr. Donald Raymond: And flowing from that governance distinction, the Government of Norway has put in place an ethics council and they have decided to screen 20 companies out of 8,000. We, on the other hand, operate at arm's length from government and have instituted a responsible investing policy that applies to all 2,900 companies in which we invest. By divesting, Norway loses any opportunity to engage with these companies to try to promote better ethical practices in those jurisdictions.

Hon. John McKay: I appreciate that your investment might be quite minimal; nevertheless, a sovereign nation has found that its investment cannot be sustained in a particular company, and we continue to invest in that company.

Mr. Donald Raymond: As I say, they have an ethical screening mandate. Ours is a fiduciary mandate based on risk and return. Contrary to the characterization of the member, we don't invest directly in mines in those countries. We invest in public companies who may have small operations in those countries. We believe that by encouraging better transparency on the risks of operating in those countries, shining a light on those practices will lead to better environmental and ethical performance by companies.

Hon. John McKay: So a modest investment with a modest flashlight is better than simply withdrawing.

Mr. Donald Raymond: Better than walking away, yes.

Hon. John McKay: In theory, then, these kinds of investments could carry on for years, without any real progress. There's no consequence. There's ultimately no consequence.

Mr. Donald Raymond: As I say, we do view it in a risk-return context. If we do believe the risk is too high, we will alter our investment position.

Hon. John McKay: I appreciate PDAC's work. I'm pleased that you've instituted these e3 things, and I'm happy to note that your institution of this e3 proposal comes a month or two after Bill C-300 was deposited on the floor of the House.

What I found curious about your testimony, Mr. Andrews, was that it only constitutes six complaints a year. I don't know, but to my mind that is a lot of complaints. To take a poor analogy, should we have no legislation about shootings because in the city of Ottawa, a million people, there are only six people a year who are actually shot? I wonder how you arrive at six a year, because I have eight here, and we haven't even worked anything up. I'd be interested in your comments on that.

The Chair: Thanks, Mr. McKay.

Ms. Brown.

Ms. Lois Brown (Newmarket—Aurora, CPC): Thank you, Mr. Chair.

I have a very quick question for the CPP Investment Board. Were you consulted on the creation of this bill?

Mr. Ian Dale: Not directly, but we've been following the development of the bill.

Ms. Lois Brown: You weren't consulted when this bill was being crafted.

Mr. Andrews, were the prospectors and miners consulted during the creation of this bill?

Mr. Anthony Andrews: Not at all.

Ms. Lois Brown: Mr. Wisner, as the legal expert, do you think they should have been consulted in this process? Can you comment on why they weren't?

And I have a follow-up question. What position does this put Canada in under international law?

Mr. Robert Wisner: Thank you.

I don't know why they were not consulted. That may be a question for Mr. McKay. The explanation I've heard from time to time is that this is simply following from the round table process. But there's a fundamental difference between what the round table advisory group recommended and what this bill does. The advisory group report recommended a non-governmental body that may facilitate the resolution of disputes triggered either by NGOs or by companies that have issues with NGOs. To some extent, the CSR counsellor is very much along the lines of that recommendation. This is a very different approach. As you've heard from Mr. McKay's comments, it is a type of criminal approach that attempts to punish people rather than bring them together. That's my first comment in terms of the consultation.

In terms of international law, I'm not aware of any country in the world that has any legislation similar to this. I have gone through the report of Professor Janda, who tried to come up with some examples in his report. I don't find that any of those examples are anything similar to what this bill does.

Today Mr. Dewar mentioned Norway, for example, but as it's been described, the Norwegian legislation only sets conditions on government assistance or investment. This bill goes much beyond that. It's not just setting conditions on government assistance; it's passing laws that apply in other countries to non-Canadian companies. No country in the world does that without protest from Canada.

The closest thing is when the U.S. passed the Helms-Burton amendment saying that Canadian subsidiaries of U.S. companies can't trade with Cuba. That's widely recognized as something that was illegitimate, that we protested was not in accordance with international law.

● (1020)

The Chair: Mr. Wisner, on that point, does the Norwegian law dictate only that no government dollars of Norway would be invested in that corporation, or does it dictate that no Norwegian investment at all will be done in that corporation?

Mr. Robert Wisner: As it's been described in the Janda report, that Norwegian legislation is very similar to provisions in the EDC act, for example, which sets conditions on where the government will put its money. It's not setting standards for Norwegian companies abroad; it's a very different type of mechanism.

The Chair: Mr. Andrews, you wanted to answer that.

Mr. Anthony Andrews: Yes, I want to respond to Mr. McKay's comments. He alluded to a connection between the launching of e3 Plus and Bill C-300. In fact, e3 Plus had a predecessor called e3—you may not have known that—which was launched in 2003.

In terms of the six allegations per year, all we were doing was trying to put this problem into context. This whole debate, which started with the SCFAIT prior to the CSR round table report, is being characterized by a lack of a systematic fact base. That was our attempt to put some data around this. It's six allegations a year, not complaints, that we feel could adequately be taken care of by an ombudsman function, without assuming the risk that the Bill C-300 process would involve.

One thing I would like to point out on the issue of consultation is that the advisory group report of the national round table process had a very important recommendation. It was the very last recommendation, and that was on the formation of a multi-stakeholder advisory group to continue the process. A specific role they would play would be helping to take these concepts that came out of the report to try to operationalize them. This process certainly wasn't applied to Bill C-300. Bill C-300 recommends something entirely different from an ombudsman. It really is against the spirit of the advisory group report, and it's very disappointing.

The Chair: Thank you very much, Mr. Andrews.

Our time is up for this first panel. If you notice on the agenda, it goes until 10:25.

We want to thank each one of you for coming and bringing your testimony to our committee today, and for helping to show us some of the areas where you have your concerns. We're going to suspend just momentarily, allow you to leave your place, and invite our next guests to the table.

● _____ (Pause) _____ ●

The Chair: We welcome back the North-South Institute and Viviane Weitzner, the senior researcher, trade and natural resources. She has a guest with her. We would encourage you to avail yourselves of the translation if you need it.

We look forward to your comments, Ms. Weitzner.

● (1025)

Ms. Viviane Weitzner (Senior Researcher, Trade and Natural Resources, North-South Institute): Thank you very much.

It is a privilege to share with you today the North-South Institute's views with respect to Bill C-300, proposed legislation that takes critical steps towards Canadian government accountability in the extractive sector overseas. By way of background, the North-South Institute is an independent, non-partisan think tank that conducts research designed to inform policy development, stimulate public dialogue, and support efforts to reduce poverty and inequality.

Since 1998, the institute has been involved in research examining issues at the crossroads of corporate social responsibility, human rights, and the extractives. In light of growing investments by Canadian extractive companies in Latin America and the Caribbean in the late 1990s and increased reports of severe conflicts in areas that are the homelands of indigenous and tribal peoples, in 2000 the North-South Institute launched a collaborative research program highlighting indigenous and Afro-descendant perspectives respecting appropriate processes for consultation and decision-making in this region.

My talk today will draw on this extensive research program. I will use two specific case studies to highlight the need for the mechanisms established in Bill C-300 and to show that this bill takes some important steps forward in light of the challenges and realities faced by the communities affected by the Canadian extractive sector overseas.

The first case I will talk about is that of Colombia. I want to acknowledge the presence here today of Carlos Rosero, of Proceso de Comunidades Negras, a national Afro-descendant organization that is one of our research partners in Colombia. I encourage you to address any questions about the Colombian situation to Carlos during question period; we have provided translation services for this purpose.

On paper, Colombia has one of the most progressive regimes in the world with respect to constitutional and legislative protections of indigenous and Afro-descendant rights. In practice, however, indigenous and tribal rights are violated on a regular basis. Indeed, despite official reports that the Colombian armed conflict may be lessening, the reality is that for indigenous and Afro-Colombian communities the conflict is intensifying. There appears to be a direct link between increased violence in indigenous and Afro-descendant communities and interest in natural resources, particularly minerals and metals. Here are concrete and recent examples involving the communities and organizations NSI is partnering with.

On October 22, a paramilitary group faxed a written threat identifying organizations and several leaders of Afro-descendant communities in the municipalities of Buenos Aires and Suarez as targets for military action in light of their "not letting in multi-national companies that will bring benefits to the communities".

Far from being anti-mining, these are communities whose primary economic activity is artisanal mining, but whose lands and work areas are being concessioned or sold off to large-scale companies, and who are facing in-migration from small-scale miners, including demobilized paramilitaries. In the wake of new changes to the Colombian mining code, black communities undertaking artisanal mining in this area since the 1600s are now facing the possibility that their mining will be declared illegal and that they will be forcefully evicted.

I know of at least one Canadian junior whose activities are adding to the pressures in this area and whose activities have not involved prior consultation with the Afro-descendant communities, as required by ILO Convention 169 enshrined in Colombian legislation, or free, prior, and informed consent, upheld as a minimum standard in the UN Declaration on the Rights of Indigenous Peoples, which is supported by Colombia.

Indigenous communities and their leaders are also the target of increased violence, even at the hands of local police. For example, on October 26, the Resguardo Indígena de Cañamomo Lomaprieta—an indigenous reserve, and one of our research partners—was subject to an attack in which four masked and armed men interrupted an afternoon soccer match and shot and wounded an 84-year-old and a 26-year-old man. Later, it was revealed that these armed men were members of the local police, who were later released. This event demonstrates not only the lack of protection by the police force, but the abuse of human rights indigenous peoples suffer, despite their clearly protected rights through legislation and special measures put in place by the Ministry of Defense.

Importantly, the collective territories of this reserve, together with the lands of the Afro-Colombian communities with which we are working in Cauca area, are within a large exploration concession area granted to a South African multinational that is in a joint venture with a Canadian junior.

● (1030)

Between March and April 2008, the indigenous communities of Cañamomo Lomaprieta experienced one month of fly-over exploration, including over sacred sites, without any form of prior consultation or consent. This created a variety of immediate negative impacts, including fear for personal safety.

Why am I telling you all of this? I am purposefully painting a detailed picture of the realities faced by indigenous and Afro-Colombian communities to highlight the extremely complex situation that doing business in Colombia entails from a human rights perspective. With the negotiation of the Canada-Colombia free trade agreement and active promotion of Colombia as a safe place to do business, there will be increased investment by Canadian extractive companies in Colombia, and the pressures and violence experienced by communities in Colombia will no doubt increase further.

The current CSR strategy of the Canadian government simply does not provide appropriate tools for navigating this complex situation. The voluntary principles on human rights and security target only one among a multitude of potential human rights violations in which Canadian extractive companies, and by extension the Canadian government, might unwittingly become complicit, despite best intentions.

The second case I want to touch on very briefly is that of Suriname. This is actually a stark exception to the claims Mr. Wisner made that all countries have in place detailed systems for accountability. Suriname is the only country in the western hemisphere where there is no recognition or protection of indigenous or tribal rights; it also has no legislation mandating environmental and social impact assessments. In short, Suriname provides a perfect litmus test from which to gauge the feasibility and effectiveness of voluntary initiatives in addressing human rights and environmental protection.

Since 2004, the North-South Institute has partnered with the Association of Indigenous Village Leaders in Suriname to support indigenous communities affected by proposed large-scale bauxite mining and related activities. The original proponents are members of the International Council on Mining and Metals, an industry association representing the world's largest multinational companies.

Our research has documented numerous instances in which these companies failed to implement their own or ICMM's policies and commitments. To cite one of the most egregious examples, the companies undertook advanced exploration in 2,800 square kilometres of primary rainforest, the traditional territory of the Lokono people, without any environmental and social impact assessment, contrary to company policies. The company has made several public apologies for this large oversight. However, saying “sorry” for not adequately protecting and mitigating social and environmental impacts in advanced exploration is simply not acceptable. It's also a harbinger of potential future practices and behaviour.

Our research in Suriname leads to two conclusions. First, left to their own devices, companies will try to get away with as little due diligence as possible, despite their own policies. Second, voluntary measures are simply not an effective means for protecting the environment or human rights.

● (1035)

The Chair: I'm sorry for interrupting. Could I have you slow down just a little bit? We have translation back there, and they're trying to keep up.

Ms. Viviane Weitzner: Thank you for reminding me.

If even the world's largest and most well-endowed companies are not implementing their own voluntary commitments, there's little likelihood that Canadian juniors or companies will do so.

In the case of countries experiencing armed conflict, like Colombia, or countries like Suriname with large governance gaps, relying on voluntary mechanisms to protect human rights and the environment is simply not sufficient. While Bill C-300 cannot purport to address these realities in their entirety, it does offer an important mechanism with which to strengthen the current Canadian CSR strategy. Notably, Bill C-300 provides recourse to an investigation for communities that may have been subject to human rights violations by a Canadian company, whether or not the company consents to the investigation. This is currently not possible for the CSR counsellor, who is not authorized to investigate cases and can review them only with the consent of the company in question.

It also offers the Canadian government the possibility of withdrawing government, political, and financial support should an investigation lead to the conclusion that human rights violations did occur. In other words, it provides a mechanism for government accountability to the Canadian public and a stronger incentive for companies to respect human rights and environmental protections, particularly if they have received government funding, in contrast to the purely voluntary regime recently announced by the Canadian government.

It also offers the Canadian public some assurance that taxpayers' money will not be used to support extractive activities violating human rights and environmental protections, at least over the long term. Where a company is found to have violated human rights or environmental protections, it is not deprived of the chance to correct this behaviour and reapply for government funding.

Ultimately, Bill C-300 embodies the spirit and intent of the recommendations in the consensus-based document produced by the multi-stakeholder advisory group established under the Canadian round table on CSR process. If passed, Bill C-300 would bring the current government strategy in line with the outcomes of this public and democratic process. In addition, it would put in place mechanisms that would hold our overseas companies to account, as recommended by the UN Committee on the Elimination of Racial Discrimination. Finally, it would place Canada as a front-runner, rather than a laggard, in addressing issues of corporate and government accountability.

Thank you.

The Chair: Mr. Rae.

Hon. Bob Rae: Thanks.

Ms. Weitzner, if you're familiar with the bill, under clause 4, how would you see the ministers carrying out the investigation?

Ms. Viviane Weitzner: There needs to be a streamlined process for figuring out whether the complaint merits further review. That needs to be developed. I think it's a process of figuring out together. This is a question of whether an advisory committee is in place to help guide that process. I believe it could be done.

I can't tell you right now what these steps would be. I think it's something we need to work out. But I think there could be some steps that would serve to take this forward.

● (1040)

Hon. Bob Rae: The minister doesn't do it himself.

Ms. Viviane Weitzner: No, I think there's talk of a potential ombudsperson. I don't believe this bill would preclude that possibility. It would also be possible to strengthen the current CSR counsellor to fulfill some of these functions. I don't think we're starting from point blank on this.

Hon. Bob Rae: So you could foresee the minister authorizing a process that would lead to a certain result within the eight-month period. Are you caught up in the eight-month period? Take your investigation in Suriname or Colombia. It would require gathering witnesses, getting people organized. Presumably, somebody authorized by the minister would have to travel to Colombia or Suriname.

Ms. Viviane Weitzner: I think the eight-month period is a window within which you could work. Whether or not that needs to be extended is something we'd need to look at. There is a review process for this bill—it isn't all set in stone. If we needed changes to the timeframe, they could be made. I don't think it's necessarily set in stone.

Hon. Bob Rae: Did you hear any of the comments by the people from the Canada Pension Plan about their current policies with respect to corporate social responsibility affecting their investment decisions?

Ms. Viviane Weitzner: Yes.

Hon. Bob Rae: What's your view of that?

Ms. Viviane Weitzner: What's my view of how corporate social responsibility affects their investment decisions?

Hon. Bob Rae: As they described it now, in the document that they—

Ms. Viviane Weitzner: I think there are certain concrete responsibilities that we have as investors.

I'm sorry, but I didn't see how that—

Hon. Bob Rae: Do you see the difficulty that if the Canada Pension Plan is a plan that's governed by nine governments, not by ten governments, that—

Ms. Viviane Weitzner: Yes, I understand that difficulty, and I do understand that amendments could be made to strengthen the bill from that perspective.

The Chair: Thank you.

Madame Bourgeois.

[*Translation*]

Ms. Diane Bourgeois: Thank you, Mr. Chair.

Good morning, Ms. Weitzner. We appreciate you being here very much because you remind us of the situations in the world where our Canadian mining companies are responsible and where we absolutely have to act. With all the examples that you gave us, we could also have talked about the Siocon Subanon Association in the Philippines, about which there were complaints a few years ago.

I am very happy to see that the representatives of the organizations who were at this table just a few minutes ago to tell us about their concerns with Bill C-300 are still in the room. You are telling us about specific facts and I feel that these extremely brilliant people are going to think about what you have just told us.

I think that Bill C-300 can be made better. Every bill can.

As a member of this committee and a Bloc Québécois MP, I would appreciate it if everyone who came here this morning to tell us that we will start to behave responsibly towards the communities whose resources we are extracting as a result of dialogue and voluntary measures would have a word with the promoters of Bill C-300. I would appreciate it if they would promote responsible investment and tell us how to improve the bill so that people are not harmed and so that aboriginal rights and human rights are respected in the countries whose resources we are extracting.

Thank you, Mr. Chair.

[*English*]

The Chair: Thank you, Madame Bourgeois.

Mr. Goldring, you have about a minute.

Mr. Peter Goldring: Thank you very much, Mr. Chairman.

I appreciate your comments, and I agree with you that there are many things that have to be developed and many things have to be worked out. Your reply to the comments from Mr. Rae about article 4.... It is ambiguous and not very clear at all. Your earlier comments were also of interest, when you were talking about Colombia, about the very progressive laws of the country and the fact that Colombians themselves aren't necessarily adhering to them.

I'd like your commentary on how we can expect Canadian companies to adhere to laws that the citizens of a country don't adhere to.

● (1045)

Ms. Viviane Weitzner: I think that's just a matter of doing responsible business in a country. Most policies—if you look at e3, even—will acknowledge that in order to do business in a country you have to respect their laws and other international standards that apply, and their international commitments as well. So you'd expect them to do that from their own responsible—

Mr. Peter Goldring: So this would follow through to the understanding that the corporations should subscribe to the United Nations rights of the indigenous people, which Canada is not a subscriber to?

Ms. Viviane Weitzner: Absolutely. In the case of Colombia, this is something the Colombian government has supported. These are fundamental rights, inherent rights of indigenous and tribal peoples, and in doing business in their homelands or by their homelands, you should. In fact, that's demanded here in Canada as well, whether or not we've supported that UN declaration.

The Chair: Thank you, Mr. Goldring.

Mr. Dewar, for a few comments.

Mr. Paul Dewar: To our guest from Colombia, because we don't have time, I'd appreciate a submission to the committee from his community's perspective on the concerns they might have about the extractive industries, what he'd like to see from Canada, and how he would view this bill.

Thank you.

The Chair: Thank you very much, Mr. Dewar.

Again, to Mr. Rosero, please feel free to make a written submission. Mr. Dewar kind of left it wide open there for you to voice your concerns, and be assured that our committee would have access to that.

We want to thank you for your attendance of our committee today and for your perspective of Bill C-300 and your comments in regard to corporate social responsibility.

We're going to suspend and reconvene in one minute with committee business.

● (Pause) ●

The Chair: We'll reconvene this meeting, and we're moving into committee business. It's not in camera; it's public.

At the close of committee business in the last meeting, at the Thursday, November 5 meeting, a motion was moved by Mr. Paul Dewar. It ended up being debated and then the debate was adjourned on the motion of Madam Francine Lalonde. The motion reads:

> That, in the context of its study on the treatment of Canadians abroad, the Committee report the following recommendations to the House of Commons calling on the government to recognize its constitutional duty to protect Canadian citizens abroad; enact legislation to ensure the consistent and non-discriminatory provision of consular services to all Canadians in distress; and create an independent ombudsperson's office responsible for monitoring the government's performance and ordering the Minister of Foreign Affairs to give protection to a Canadian in distress if the Minister has failed to act in a timely manner.

That is the motion that we were debating at the close of last day. We'll move to debate again.

Mr. Goldring.

Mr. Peter Goldring: Thank you very much, Mr. Chairman.

I have difficulty with this motion on its very premise because I do not believe that there is a constitutional reference anywhere in the Constitution of Canada that would subscribe to this issue. So I have difficulty with it on its very premise, and I think that this type of a motion that ignores the reality of what is in the Constitution is by itself trying to amend the Constitution, which simply cannot be done by this committee. Amending the Constitution is very specific: it calls for 50% of the population of the country and six out of the ten provinces or territories, and it has to go through a procedure that involves not only passing the motion in Parliament but passing the motion in the Senate and passing the motion in every legislature of the country. I believe that its very premise is wrong.

I'll start out by reinforcing this by going through the Constitution. I will invite people to—

● (1050)

Hon. Bob Rae: You'll have to start at the beginning.

Voices: Oh, oh!

Mr. Peter Goldring: Absolutely, absolutely.

A voice: I didn't bring my sleeping bag.

Hon. Bob Rae: Don't give us the intermittent version.

The Chair: Thank you, Mr. Rae.

On Mr. Rae's invitation, then, Mr. Goldring, I guess if that's what you're going to do, please continue.

Mr. Peter Goldring: Thank you very much.

Really, it is of the utmost of importance, because this is the fabric and soul of this country, the written Constitution, and we should take great pride in this Constitution that we have.

I'll begin with the Constitution Act of 1982, the Charter of Rights and Freedoms, because it had been referenced in the past as being a descriptor of this right, which, in fact and in reality, it is totally not.

So I'll begin with the Canadian Charter of Rights and Freedoms:

> Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law.

Then we go into the guarantee of rights and freedoms:

> The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Well, that in itself certainly implies that these are rights and freedoms under the laws of Canada, not under international laws. It would be the laws of Canada.

Fundamental freedoms:

> Everybody has the following fundamental freedoms:
>
> (a) freedom of conscience and religion.

Well, we know full well that not all people do have those freedoms internationally. For Canadians to subscribe that a Canadian should have that right and freedom in all countries of the planet earth is really being a little bit naive.

> (b) freedom of thought, belief, opinion and expression, including freedom of the press—

The Chair: Mr. Goldring, just one moment.

On a point of order?

Mr. Paul Dewar: Well, no. We have an intervention here from a member who's actually ignoring his own government's recognition of the constitutional rights in the case of Mr. Abdulrazik, for one, the Federal Court for second. So he's going on about something that is recognized by the courts, by his own government. I'm thinking that —

The Chair: Okay, Mr. Dewar. On this debate what I'm trying to do is make sure that even if Mr. Goldring is giving us a speech on the Constitution it is—

An hon. member: Relevant?

The Chair: —relevant to the motion.

Mr. Paul Dewar: Well, it's not relevant to the motion.

The Chair: I think that's what he's doing. He's building the foundation that there are certain rights that we appreciate and love here in Canada—

Mr. Paul Dewar: Don't we have a Constitution?

The Chair: —constitutional rights, but do all those same rights apply in countries, as he said, all around the earth?

Mr. Paul Dewar: No, they're rights of Canadians, not countries. That's my point. It has been recognized by the Federal Court and it has been recognized by this government—

The Chair: All right. Still, that's debate. That's not a point of order.

Mr. Paul Dewar: Well, no, that is a point of order. If you say that we're going to get into—

The Chair: Mr. Goldring.

Mr. Peter Goldring: Thank you very much, Mr. Chairman.

That's exactly my point. It's that I want to be very, very careful on this, so that I do not miss—and perhaps it can be pointed out during the course of this—where in our Constitution that expression is. I do not find it, so I will be very careful in going through this line by line: "freedom of peaceful assembly" and "freedom of association".

We also have democratic rights: "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein". That clearly does not mean the House of Commons of Great Britain. That means the House of Commons of Canada. We cannot extrapolate this to mean that somehow there is extraterritorial application to this Constitution. It is about Canada.

It states, "No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members".

● (1055)

Mr. James Lunney: Let's go for five, you guys.

Mr. Peter Goldring: Well, yes. I was going to make the comment that we may very well, even in the minority government situation that we're existing in here today, have the privilege of extending that to five years, given the participation of the parties opposite. I think it's very appropriate. As a government, we certainly would like to have the continuity of this government so that we can get some real action done and have some continuity to it.

It states, “In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be”. That gives us an opening here to continue it, if we have participation here from opposite us.

It states, “There shall be a sitting of Parliament and of each legislature at least once every twelve months”.

Still we have not entered into any referencing here for this extraterritorial protection under the Constitution, so I'll continue and see if we can find it in here.

On mobility rights, it states, “Every citizen of Canada has the right to enter, remain in and leave Canada”. Also, it states, “Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right...to move to and take up residence in any province”. I would add here that perhaps this may be a bit of an oversight on the part of the writers; I would include “or territory”. It states that it can be “to pursue the gaining of a livelihood in any province”. Once again, I would be very open to including the reference to territories, too.

But clearly it's not suggesting that you have the right to move into any other country on planet Earth and move from any other state within those countries.

It states, “The rights specified in subsection (2) are subject to...any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province”—and I would suggest “or territory”—“of present or previous residence...”. Clearly, these are domestic laws. They are not talking of international laws.

It mentions “...any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services”. So there are some provisos, even here in Canada. It states, “Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of—”

The Chair: Mr. Goldring, excuse me for just one moment, please.

Mr. Patry.

Mr. Bernard Patry: Can I make a motion that we adjourn? It's a filibuster. We can adjourn and that way everyone will go back to some other duty. Can we all agree?

The Chair: Okay. We have a motion to adjourn, which is a non-debatable motion.

All those who are in favour of adjourning this meeting today, signify by raising your hand.

Mr. Peter Goldring: Will I have the opportunity to pick up where I left off at the next meeting?

The Chair: Yes, you will.

Mr. Peter Goldring: Very good.

(Motion agreed to)

The Chair: This meeting is adjourned.

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