

Corporate Social Responsibility, Resulting 'Social Licence' Now a Must For Mining Companies and Other Resource Firms

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Corporate social responsibility (CSR) and the resulting 'social licence' that its faithful exercise can deliver is becoming as basic to the needs of ore mining, oil and gas, forestry, fishery and other resource-based businesses as extraction licences and permits.

Complacency and sloppy (or non-existent) CSR planning and practice have cost corporations dearly in project delays and interruptions, profitability and reputation.

The most successful mining and other extraction companies in today's global economy have the most alert, professional and disciplined policies and procedures in this area.

Once upon a time, it has been said, corporate social responsibility had a reputation for outright flakiness. The idea that social considerations (including environmental ones), should be added to the profit-motive as key drivers of corporate conduct was simply anathema and our laws and standards reflected that view.

Today, most large companies have entire departments devoted to CSR. Its evolution has taken it from a new-age fantasy to a focus on managing corporate reputations to, more recently, a key element of the fundamentals of running almost any kind of business.

The ever-increasing basket of CSR concerns (now social, environmental, and cultural) is grouped under the older and narrower concept of "sustainability" which, until recently, was confined to environmental matters. Companies across all sectors are busy creating "chief sustainability officers", setting up "sustainability units", generating all manner of sustainability indexes and reports and, not surprisingly, hiring sustainability consultants. The buzzword in management circles being "sustainability", corporations large, medium and small are seeking to

incorporate the concept into product development, marketing, branding, relationships with suppliers and distributors, environmental footprint management and, increasingly, the full range of social impacts from the company's activities.

What is clear is that CSR-type concerns can no longer be ignored: corporate social responsibility holds the promise of pushing business to becoming more thoughtful in its use of resources and more creative about what at any given time can give it that extra competitive edge.

But how is this all playing out among Canadian miners?

Canada's Mining Sector

Canada is a global player in the mining sector by any measure. It is a leading producer of potash, iron ore, coal, uranium, nickel, copper, gold and diamonds and plays an important role as home to many of the world's junior exploration companies and several top-tier global mining companies. It is home to the most active capital markets serving the sector with Toronto the center of financing for capital used to fund mineral exploration. In 2011, for example, Canadian markets were ranked first in listed mining companies worldwide, with more than 90 per cent of all global mining equity financings being completed in Toronto. Of all stock market listings in Toronto, 43 per cent are in mining. Thirty-nine per cent of the equity capital raised globally for mining was raised on the Toronto Stock Exchange and its junior venture exchange.

But mining as an industry can be hard on both the natural and social environments. Poor project execution can easily lead a mining company into protracted and newsworthy disputes over land tenure, resource development and benefit-sharing, particularly in developing countries where Canadian mining companies have a significant part of their operations today and where such disputes can run into archaic land tenure systems, modern forms of resource nationalism and great cultural divides.

INDUSTRY BASED CSR

These factors, together with sustained public criticism of the industry in relation to environmental and social issues both in Canada and abroad, have pushed government, as well as the mining industry, to embrace CSR. In this sector, CSR to date has taken the form of non-regulated, voluntary actions by mining companies intended to provide benefits to affected communities, together with a myriad of voluntary "best practices." Such efforts in the private sector have had the active support of industry associations, such as the Mining Association of Canada and the Prospectors and Developers Association (PDAC). For example, we have seen the creation of standard-setting initiatives such as the Mining Association of Canada's *Towards Sustainable Mining*, PDAC's *e3 Plus*, and the Canadian Institute of Mining, Metallurgy and Petroleum.

The Mining Association of Canada's standards and reporting are mandatory for members (although they represent only a minority of companies operating mines in Canada). PDAC's *e3 Plus* provides members with a guideline "to help exploration companies continuously improve

their social, environmental, and health and safety performance, and to comprehensively integrate these three aspects into all of their exploration programs around the world.” The e3 *Plus* guideline is intended to complement established international norms.

INTERNATIONAL STANDARDS

The federal government jumped into this arena with both feet because of its concerns with Canada’s reputation in the world following an unfortunate series of bad news stories relating to Canadian mining and oil operations abroad and with the country’s obligations under international law. In 2009, Ottawa launched its CSR strategy, the centre pillar of which was the promotion of widely-recognized voluntary international CSR performance guidelines among Canadian mining companies operating abroad. In 2010, it created Canada’s first *Office of the Extractive Sector CSR Counsellor*. (The first and current Counsellor, Dr. Marketa Evans, was a Blaneys guest speaker last October).

Chief among the international guidelines the Government of Canada is promoting are:

- International Finance Corporation (IFC) *Performance Standards on Social & Environmental Sustainability* for mining projects with potential adverse social or environmental impacts;
- The OECD’s *Guidelines for Multi-national Enterprises*;
- The UN *Global Compact*;
- The *Extractive Industry Transparency Initiative*;
- The *Voluntary Principles on Security and Human Rights* for projects involving private or public security; and
- The *Global Reporting Initiative* (GRI) for CSR reporting to enhance transparency and encourage market-based rewards for positive CSR performance.

Of these, two main sets of standards have gained the most traction in the mining industry, particularly with those operating in the developing world.

The [IFC’s Performance Standards on Social & Environmental Sustainability](#) have become the performance benchmark for projects in developing and emerging countries. The IFC standards address sustainability across a broad range of areas: social and environmental assessment and management systems; labor and working conditions; pollution prevention and abatement; community health, safety and security; land acquisition and involuntary resettlement; biodiversity conservation and sustainable natural resource management; indigenous peoples; and cultural heritage. Through the *Equator Principles*, adopted by 77 of the world’s leading banks, adherence to the IFC Standards is also now one of the factors used in the project financing approval process.

The Global Reporting Initiative (GRI), designed to ensure that reliable and transparent CSR-related information was available in standardized form to interested stakeholders, was developed (and continues to evolve) via a multi-stakeholder process involving industry, investors, civil society and labor. It has come to be recognized as the gold standard in CSR reporting.

All of these standards and initiatives remain voluntary, although market and competitive pressures as well as the demands of stakeholders are gradually ensuring that not adhering to the standards will require a good explanation. It can be expected that they will fill the void in the law for a time. But the trend toward increasing regulation and standard setting, whether those of the moral suasion or legal kind, is clear. Recent bilateral trade treaties, such as the Canada-Peru Free Trade Agreement, explicitly encourage the promotion and enforcement of such standards as an exception to the obligations of the signatory states to liberalize trade.

DOMESTIC REGULATION

In Canada as in other countries, binding legal regulation in this area has lagged, but it is not non-existent. Although they remain in their early stages, disclosure requirements for public companies under various provincial securities laws are becoming the norm. Issuers, for example, are now required to disclose specified information about environmental matters in their annual filings.

All of this is over and above private sector initiatives which are not sector-specific, such as those targeted at corporate boards of directors as a matter of good corporate governance or the incentives created by movements, such as those seeking to promote change in corporate conduct through socially responsible investment.

Where there has been real progress toward direct legal regulation has been in relation to corruption of foreign officials. ([See Henry Chang's foregoing article](#) on the need for comprehensive and effective anti-corruption compliance programs.) The UK, the U.S., Canada and other first world countries introduced strong legislation intended to dissuade companies operating abroad from indulging corrupt local officials in pursuit of project development or local contracts (Canada has recently amended its legislation to provide for higher penalties and tighter enforcement, more in line with the regimes of those two other countries). At least two significant cases against Canadian extractive sector companies have resulted in stiff fines. The development has led countries with emerging economies and strong interests in foreign investment in the sector (such as Mexico) to also introduce weaker forms of this type of legislation.

Conclusion

According to the federal government, the number of companies in Canada reporting publicly on their CSR practices and performance doubled between 2001 and 2005. Eighty percent of all companies listed on the Toronto Stock Exchange in 2010 were reporting at least some CSR related information. The concept has come of age and companies in all sectors ignore it at their peril.