

# CNCA RCRCE

Canadian Network on Corporate Accountability  
Réseau canadien sur la reddition de comptes des entreprises

January 4, 2016

Honourable Stéphane Dion  
Minister of Foreign Affairs

I am writing to you on behalf of the Canadian Network on Corporate Accountability (CNCA) to congratulate you on your recent appointment as the Minister of Foreign Affairs.

The CNCA unites 30 human rights and environmental non-governmental organizations, labour unions, and faith-based and international solidarity groups from across Canada. The network advocates for the adoption of mandatory corporate accountability standards for Canadian mining, oil and gas companies that operate abroad. Since its formation in 2005, the network has sought to ensure that Canadian extractive companies respect the fundamental rights of all people, no matter where they operate.

Canada is a global leader in the extractive sector and is home to more than half the world's mining companies. However, Canadian companies' overseas operations are often associated with credible accusations of human rights abuse including forced labour, sexual violence, forced displacement and failure to respect the right of Indigenous peoples to free, prior and informed consent. Those who are harmed often lack access to effective redress.

The United Nations 'Protect, Respect, and Remedy' Framework on Business and Human Rights, and the Guiding Principles to that framework, confirm the legal obligation of states to respect, protect and fulfill human rights. This duty includes the obligation to provide access to remedy for the victims of human rights abuse. Canada has thus far failed to fulfill these legal obligations. This year the UN Human Rights Committee joined other international authorities in calling on Canada to ensure that its corporations, particularly those in the mining sector, respect human rights standards when operating abroad.

The Liberal Party of Canada has played an important role in advancing corporate accountability in Canada. Under the leadership of Prime Minister Paul Martin, the Standing Committee on Foreign Affairs and International Trade issued a ground-breaking report on Canadian mining activity in developing countries. Mr. Martin's government subsequently convened the *National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries* ("the National Roundtables"). The CNCA coordinated civil society participation in that unique, multi-stakeholder process. In 2009, we worked closely with Liberal Members of Parliament to develop and advance Bill C-300, the *Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act*. In 2013, the Honourable Irwin Cotler co-hosted the launch of our *Open for Justice* campaign.

We welcome the Liberal Party of Canada's commitments to act on the recommendations of the Advisory Group to the National Roundtables, to set up an independent extractive sector ombudsman office and to safeguard fundamental human rights both at home and abroad.<sup>1</sup>

We would like the opportunity to meet with you to provide further information about our work and to discuss Canadian corporate accountability leadership. We will follow up with your office to arrange a meeting. In the interim, please do not hesitate to be in touch if you have any questions or would like further information.

We look forward to working with you and your colleagues to advance mandatory corporate accountability mechanisms in Canada.

Sincerely,



Emily Dwyer  
Coordinator, Canadian Network on Corporate Accountability

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<sup>1</sup> Political party commitments were compiled in the lead up to the 2015 federal elections. Responses are contained in a Parliamentary Report Card: <http://cnca-rcrce.ca/wp-content/uploads/Parliamentary-Report-Card-Corporate-Accountability-for-Canadas-mining-oil-and-gas-sectors-sept-2015.pdf>

**Response #1 from the Honourable Stéphane Dion (via email, received February 17, 2016)**

Ms. Emily Dwyer  
Coordinator  
Canadian Network on Corporate Accountability  
[coordinator@cnca-rcrce.ca](mailto:coordinator@cnca-rcrce.ca)

Dear Ms. Dwyer:

Thank you for your correspondence of January 4, 2016, congratulating me on my appointment as Minister of Foreign Affairs and requesting a meeting with me.

I am honoured that Prime Minister Justin Trudeau has appointed me to this position. I will work hard to ensure that our country plays the international role that our people expect. I am also firmly committed to promoting the universal values of human rights, justice, democracy and sustainable development globally.

I appreciate receiving your views on the importance of Canadian corporate accountability in the extractive sector. As you know, the Canadian extractive industry is critically important to Canada, and the substantial international presence of Canadian extractive companies globally represents considerable potential for positive resource development that improves the lives of people and communities around the world.

Canada has high expectations for Canadian extractive sector companies, making it clear in Canada's Corporate Social Responsibility (CSR) Strategy that these companies should reflect Canadian values in all their activities abroad. The majority of Canadian extractive companies operate abroad without incident; however, Canada recognizes that work needs to be done to mitigate the risk of issues arising. Canada helps companies improve their CSR performance by offering advice and support, but Canada also makes clear the link between responsible corporate behaviour and continued access to financial and trade advocacy support.

The Government of Canada works with host governments providing support to resource-rich developing countries to strengthen their capacity to manage their own natural resources in an economic, social and environmentally sustainable manner. Canada recognizes the business rationale and the social and economic importance of establishing an environment in which responsible investment can take place.

Canada is also proud of its long-standing leadership in a number of multi-stakeholder forums designed to promote and improve performance by all actors involved in the extractive sector. Canada will assume the chair of the Voluntary Principles on Security and Human Rights in April 2016, an initiative to promote human rights compliance in the context of extractive sector security. Canada has been a leader in advancing the Organisation for Economic Co-operation and Development (OECD) responsible business conduct (RBC) agenda, co-chairing and funding the development of two key OECD RBC documents on the responsible sourcing of minerals from high-risk areas and guidance on meaningful stakeholder engagement in the extractive sector in support of the OECD Guidelines for Multinational Enterprises.

With regard to your request for a meeting, while I regret that I am unable to meet with you due to a heavily committed schedule, officials of Global Affairs Canada (GAC) would be happy to do so. GAC officials will be in contact with you to arrange a meeting to discuss Canadian corporate accountability leadership.

I look forward to our continued collaboration on this file.

Sincerely,

The Honourable Stéphane Dion, P.C., M.P.  
Minister of Foreign Affairs

10 March 2016

The Honourable Stéphane Dion  
Minister of Foreign Affairs  
Global Affairs Canada  
125 Sussex Drive  
Ottawa, ON K1A 0G2

**Subject: Global Affairs Canada and Corporate Accountability**

I am writing to you on behalf of the Canadian Network on Corporate Accountability (CNCA). The CNCA unites 30 human rights and environmental non-governmental organizations, labour unions, and faith-based and international solidarity groups from across Canada.

This letter follows correspondence we sent on January 4, 2016 to you and to the ministers of International Trade and Natural Resources, and your response on February 17, 2016.

Thank you for your commitment to ensure Canada plays the international role that Canadians expect, and for the details you provided on Canada's current corporate accountability programs. We appreciate your offer to meet with officials of Global Affairs Canada, and await their communication to arrange a meeting. We share your optimism for continued collaboration on this file.

At the same time, our network was surprised by a February 10 article in *Embassy Magazine* which indicated that Global Affairs Canada will not be making any changes to the Office of the Extractive Sector CSR Counsellor.

In 2015, the Liberal Party of Canada stated that the previous government's CSR Strategy did "nothing" to implement the recommendations of the Advisory Group to the National Roundtables on CSR<sup>2</sup> and did not take "any other meaningful action on CSR."<sup>3</sup> The Liberal

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<sup>2</sup> Under the leadership of Prime Minister Paul Martin, the Standing Committee on Foreign Affairs and International Trade issued a ground-breaking report on Canadian mining activity in developing countries. Mr. Martin's government subsequently convened the *National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries* ("the National Roundtables"). Industry and civil society representatives (Advisory Group) reached an unprecedented consensus around public policy recommendations, including the creation of an extractive sector ombudsman to investigate complaints and the development of human rights guidelines for Canadian companies. The recommendations of the Advisory Group are available here: <http://www.pdac.ca/pdf-viewer?doc=/docs/default-source/public-affairs/csr-national-roundtables-advisory-group-report.pdf>

Party of Canada committed to act on the Advisory Group’s recommendation, including the creation of an independent Ombudsman office. In September 2015, Liberal Party of Canada President Anna Gainey wrote to the CNCA that:

[a] Liberal government will act on the Advisory Group’s recommendations ... [and]... will set up an independent ombudsman office to advise Canadian companies, consider complaints made against them, and investigate those complaints where it is deemed warranted.”<sup>4</sup>

In June 2014, then-Foreign Affairs Critic, Marc Garneau, noted the concerns of a large number of his constituents “regarding the activities of Canadian mining companies in foreign countries. We would not be hearing from them if everything was going along perfectly.”<sup>5</sup>

These commitments were well received by our constituents across Canada, particularly given Prime Minister Justin Trudeau’s undertaking to deliver on all campaign promises. Canadians view access to justice for the victims of Canadian corporate abuse overseas to be an important foreign policy issue. Since the 2013 launch of the Open for justice campaign, 100,000 of our constituents have written to their members of Parliament calling for the immediate creation of an Ombudsman office. Many of these constituents are asking us when the new government will begin to act on this commitment.

The CNCA, its member organizations and their constituents are concerned because the CSR Counsellor’s Office is ineffective in providing remedy to those alleging foreign corporate abuse involving Canadian companies.

Despite being in existence since 2009, the CSR Counsellor has failed to successfully mediate a single case brought before it. To date at least half of the companies subject to review refused to participate. Minor changes to the CSR Counsellor’s Office in the 2014 *Doing Business the Canadian Way* CSR Strategy were described as giving the Counsellor more power to compel companies to participate. However, as noted in a CNCA press release “[t]he updated CSR strategy still allows extractive sector companies to pull the plug on the review process whenever they want. Companies that shut down a review of their conduct will continue to be able to raise funds on Canadian stock exchanges, or even receive public funds from Export Development

<sup>3</sup> Political party commitments were compiled in the lead up to the 2015 federal elections. Responses are contained in a Parliamentary Report Card: <http://cnca-rcrce.ca/wp-content/uploads/Parliamentary-Report-Card-Corporate-Accountability-for-Canadas-mining-oil-and-gas-sectors-sept-2015.pdf>. The full response from the Liberal Party of Canada is available at: <http://cnca-rcrce.ca/wp-content/uploads/LPC-Response-Election-2015-CNCA-R%C3%A9ponse-du-PLC-%C3%89lection-2015-RCRCE.pdf> (LPC Response Election 2015).

<sup>4</sup> Ibid (LPC Response Election 2015).

<sup>5</sup> <https://openparliament.ca/debates/2014/6/3/marc-garneau-1/>

Canada; the government strategy says merely that company obstruction of a CSR review will be “taken into account” by EDC. Instead of real sanctions, the government hopes to compel companies to act more constructively by threatening to refuse letters of recommendation or a spot on a Canadian trade mission.”<sup>6</sup>

Further, the CSR Counsellor is not mandated to investigate complaints, to determine whether companies have caused harm or breached the Government of Canada’s guidelines for extractive companies, to recommend reparations or the withdrawal of government support. The CSR Counsellor’s office is not independent from the Government of Canada, but rather reports directly to the Minister of Trade. The minor changes of 2014 did not address these shortcomings. Canada needs an independent Ombudsman that can investigate and make recommendations.

In our earlier correspondence, we highlighted our appreciation for the important role the Liberal Party of Canada has played in advancing corporate accountability in Canada, noting in particular the voting record of Liberal Members of Parliament on recent corporate accountability private members bills. A majority of Liberal MPs, including several current Cabinet Ministers and Prime Minister Justin Trudeau, voted in favour of both the *Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries Act* (Bill C-300, 2010) and the *Corporate Social Responsibility of Extractive Corporations Outside Canada Act* (Bill C-584, 2014).

Given your party’s prior stated and demonstrated support for serious reform in Canada’s approach to corporate accountability of Canadian firms, we hope and trust that the Government of Canada will meet its commitment to create an effective extractive sector Ombudsman in Canada, and look forward to engaging with you and your staff on how this can be accomplished.

Sincerely,

Emily Dwyer  
Coordinator, Canadian Network on Corporate Accountability

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<sup>6</sup> <http://cnca-rcrce.ca/new-mining-counsellor-set-up-to-fail/>

**Response #2 from the Honourable Stéphane Dion (via email, received May 17, 2016)**

Ms. Emily Dwyer  
Coordinator  
Canadian Network on Corporate Accountability  
[coordinator@cnca-rcrce.ca](mailto:coordinator@cnca-rcrce.ca)

Dear Ms. Dwyer:

Thank you for your email of March 10, 2016. I appreciate your continued correspondence on the importance of Canadian corporate accountability in the extractive sector.

Canada has a long-standing commitment to corporate social responsibility (CSR), and was one of the original adherents to the 1976 Organisation for Economic Co-operation and Development (OECD) Declaration on International Investment and Multinational Enterprises, and its Guidelines. As you know from my previous correspondence, we recognize the importance of CSR in a globally competitive economy and expect Canadian companies working internationally to respect all applicable laws and to meet or exceed widely recognized international standards for responsible business conduct, including as they pertain to human rights and the environment.

While our shared concern and efforts are focused on championing respect for human rights and thereby contributing to the prevention of abuse and conflict, part of a comprehensive approach must include means for meaningful resolution when disputes do arise. Regarding your comments on the government's commitment to establish an independent extractive sector ombudsman, I would like to reiterate that Canada already has two dialogue facilitation mechanisms in place for helping Canadian extractive sector companies, and those affected by their operations abroad, with the means to pursue a facilitated dialogue to help resolve their differences in a mutually acceptable manner. The first is housed in Canada's National Contact Point (NCP), established in the year 2000 as part of our commitment to the OECD Guidelines for Multinational Enterprises on responsible business conduct. The second is the Office of the Extractive Sector CSR Counsellor, established as part of Canada's CSR Strategy for Canadian extractive sector companies abroad. It should be noted that these Canadian mechanisms are not meant to replace local processes, nor do they preclude the use of court systems for access to more formally determined remedies, either locally in host countries, or in Canada, through legal restitution.

I would also note a number of updates that were made in 2014 to the CSR Strategy relating to the CSR Counsellor and the NCP:

- Greater emphasis was placed on the CSR Counsellor's work in supporting dispute prevention through early detection and resolution, via proactive engagement with stakeholders. This includes the work of:
  - Heightening awareness among Canadian extractive sector companies of the government's expectations, as set out in the CSR Strategy, and of the CSR guidelines and tools relevant to their activities;
  - Advising on the implementation of CSR standards, especially in regard to specific site-level concerns raised by stakeholders, including companies; and
  - Offering early stage dialogue facilitation between communities and companies, with a view to resolving disputes before they escalate.
- In addition to refocusing the Counsellor's role on early intervention, procedures have been established for the Counsellor to refer long-standing and more complex issues to Canada's NCP for more formal mediation, where appropriate.
- A clear link has been made between a company's access to Government of Canada trade advocacy and economic support and their CSR practices, including their willingness to participate in dialogue facilitation offered by the CSR Counsellor or the NCP. A company's decision to not participate in either of these dialogue facilitation mechanisms is made public, as is any recommendation by the CSR Counsellor or the NCP for the withdrawal of Government of Canada support.

Canada is not aware of any other country that has linked access to government support to behaviour and operations of its companies abroad. Internationally, Canada has been recognized by Mr. John Ruggie, the former United Nations Secretary-General's Special Representative for Business and Human Rights, as having a Strategy that is both innovative and ground-breaking because of this link.

Mr. Jeffrey Davidson was appointed to the Office of the Extractive Sector CSR Counsellor in May 2015. I understand much of Mr. Davidson's work to date has focused on dispute prevention through the promotion and provision of advice on the implementation of CSR standards and guidelines to a number of Canadian companies, some of which is confidential in nature. I would stress that not only can formal requests for review and dialogue facilitation be made to either the CSR Counsellor, or the NCP, by individuals or organizations, including communities or civil society, but that any stakeholder can contact the Office of the CSR Counsellor to draw attention to site-level issues that are of a CSR nature and where the Counsellor's advisory capacity could be beneficially utilized. The Canadian Network on Corporate Accountability (CNCA) and its members can play an important role working with the Office of the CSR Counsellor on the

prevention of human rights abuses by consulting with his office as soon as possible after becoming aware of a potentially developing situation.

I would also note that Global Affairs Canada (GAC) is exploring options to further the effectiveness of Canada's approach to corporate social responsibility. I understand GAC officials have been in touch with you and a meeting is being arranged to discuss your views.

Thank you again for taking the time to share the views of the CNCA on this matter.

Sincerely,

The Honourable Stéphane Dion, P.C., M.P.  
Minister of Foreign Affairs