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Green Mining or Green Washing? Corporate Social Responsibility and the Mining Sector in Canada

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September 2012**

Canada is a global player in the mining sector as a leading producer of commodities like potash, iron ore, coal, uranium, nickel, copper, gold and diamonds. The sector makes up a significant portion of the Canadian stock market and enjoys a prominent place in political realms at local, regional and national levels. While some local communities are largely dependent on the industry, mining makes up less than 3% of Canadian GDP (including metal processing and preliminary fabrication).¹ The domestic economic contribution of the industry is often over-stated by proponents and governments that selectively use statistics.² Internationally Canada also plays an important role as home to many of the world's junior exploration companies and a few top tier global mining companies, and as the centre of financing for venture capital used to fund mineral exploration.

Consistent public criticism of the industry for environmental and social issues at home and abroad have pushed the industry into taking a pro-active response to these concerns. Much of this effort is wrapped up in the language of “corporate social responsibility”. While some definitions of CSR are very broad, for our purposes we define CSR as efforts to make resource extraction more acceptable through non-regulated, voluntary actions by mining companies that:

- 1) provide philanthropic benefits to communities affected by their projects and to broader society; and
- 2) develop and implement “best practices” (as opposed to mandatory regulations) in areas as diverse as taxation, environmental performance, social impacts, indigenous rights, and reporting and transparency.

The CSR phenomenon transcends virtually all economic sectors but within the mining sector its growth has been explosive, with a proliferation of reports, consultants, conferences, workshops and the like. While much of the emphasis on CSR has been as a means to address the

¹ Natural Resources Canada provides a number of statistics: <http://www.nrcan.gc.ca/statistics-facts/home/887#fig1>

² MiningWatch Canada and Pembina Institute. 2002. Looking Beneath the Surface: <http://www.miningwatch.ca/publications/canadas-mining-industry-strikes-gold-taxpayers-wallet-federal-taxpayers-spend-13000>

“governance gap” in the Global South³, there is also a strong domestic CSR culture in Canada led by industry associations such as the Mining Association of Canada and the Prospectors and Developers Association (PDAC), and supported by the Canadian government. This article reviews the CSR culture and practices of mining companies operating in Canada.

As elsewhere, CSR initiatives in Canada are used by the industry as an effort to portray the industry as a “good neighbour and good corporate citizen” and also to thwart attempts to impose mandatory requirements on the industry. Our experience shows that while CSR practices may bring some improvements in performance and transparency, they also serve to obfuscate outstanding issues within the sector and detract from processes to develop necessary mandatory regulatory improvements.

CSR activities highlighted by Canadian companies in their communications include:

- Financial contributions to local charities and community facilities.
- Financial contributions to larger, high profile institutions such as museums, performing arts centres, etc.
- Training programs to improve access to employment in the mining sector.
- Contributions to academic institutions and research facilities.
- Educational initiatives focussed at younger age groups to inform them about the mining sector.
- Creation of, and participation in, voluntary standard setting initiatives such as the Mining Association of Canada’s *Towards Sustainable Mining*, PDAC’s *E3 Plus*, and generic standards systems such as those of the International Standards Organization (ISO°).
- Sustainability and corporate responsibility reporting and documentation of activities online, through news releases, etc.

While the larger corporations operating in Canada such as Barrick, Goldcorp, Potash Corp, Vale, and BHP have the most extensive CSR programs, smaller junior companies are increasingly including CSR activities and reporting, though the amounts and profile of their financial donations are much less.

The Generosity of Mining Companies

The presence of Potash Corp, one of Canada’s largest mining companies and the world’s largest potash producer,⁴ in and around the community of Sussex, New Brunswick is illustrative of mining industry CSR and realities in Canada. Potash Corp portrays itself as deeply committed to sustainability and has long lists of awards and citations on its website along with many pages of reporting on social and environmental indicators. Their online report

³ Canada’s “Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector” is a policy framework of the Department of Foreign Affairs and International Trade. <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse-strategie.aspx?view=d>

⁴ Potash Corp. 2011 Online Overview: http://www.potashcorp.com/industry_overview/2011/overview/company_overview/#a1

boldly states, “In communities where Potash Corp operates we do not believe we have a negative societal impact.”⁵ In 2011 the company reports having spent \$756,600 on community contributions.⁶ The Company’s New Brunswick operations were even cited as a good example of community integration by the International Development Research Council (IDRC) in 2001.⁷

In the communities of south-central New Brunswick many citizens have a very different perspective on the company. For years, the community of Penobsquis, located above the underground workings of the company’s mine, have fought to have Potash Corp take responsibility and compensate them for significant damages that have occurred to their properties, which they allege are a direct result of the company’s operations.⁸ One example is the loss of sixty drinking water wells. These were replaced first with inadequate tanks and then with a central water system, paid for in large part by the province of New Brunswick and by the homeowners who had to pay a fee for the service. Through a costly and gruelling hearing process in which they felt they were pitted not only against the ‘Goliath’ Potash Corp but also their own provincial government, the citizens finally reached a settlement with the company on this issue.

The citizens were also using the hearings in an effort to address damages to their properties caused by subsidence and losses in property values. No settlement has been reached on these issues. During a recent visit to Penobsquis by the author, local citizens pointed with irony to a sign celebrating Potash Corp’s donation of playground equipment at the local community centre. The citizens noted that many families are moving away from the area because of the problems they blame the mine for creating.

The philanthropic contributions of mining companies are meant to increase their positive public exposure but in some cases may also have more insidious objectives or potential. In particular, corporate contributions and donations by individuals associated with major mining corporations to universities and public educational facilities have raised concern over undue influence over public institutions such as universities and museums.⁹

⁵ Potash Corp. 2011 Online Annual Report, Global Reporting Initiative (GRI), , Society, Local Communities, SO 10: http://www.potashcorp.com/annual_reports/2011/gri/society/#SO10

⁶ Potash Corp. 2012. New Brunswick Highlights: www.potashcorp.com/media/POT_Facility_Sheet_NewBrunswick.pdf

⁷ IDRC. 2001. Large Mines and the Community, Socioeconomic and Environmental Effects in Latin America, Canada and Spain: <http://www.idrc.ca/EN/Resources/Publications/Pages/IDRCBookDetails.aspx?PublicationID=247>

⁸ Details of this story are available at www.penobsquis.ca

⁹ T. Tedesco. 2012. The uneasy ties between Canada’s universities and wealthy business magnates, Financial Post Mar 9: <http://business.financialpost.com/2012/03/09/influence-u-the-uneasy-ties-between-canadas-universities-and-wealthy-business-magnates/>; Civil Society Letter to the Canadian Museum of Nature: http://www.polarisinstitute.org/civil_society_letter_to_the_canadian_museum_of_nature_barrick_out and Sierra Club Canada: <http://www.sierraclub.ca/en/tar-sands/in-the-news/oil-sponsor-role-questioned-museum-exhibit>; L. McQuaig and N. Brooks, excerpt: The Trouble With Billionaires, published in the Toronto Star Sept 10, 2010: <http://www.thestar.com/news/insight/article/859721--excerpt-the-trouble-with-billionaires-by-linda-mcquaig-and-neil-brooks>

In their own defence the institutions on the receiving end say the money from corporations is needed in order to continue offering quality services and programs and to make up for shortfalls in public funding. Meanwhile, Canadian mining companies effectively lobby governments to maintain their privileged tax status, make use of offshore tax havens,¹⁰ and despite extracting millions of dollars of minerals regularly show “no profits for tax purposes”.¹¹ Thanks to increased production and mineral prices financial contributions to Canadian governments from the mining sector have been increasing, but an analysis by the United Steel Workers economist Erin Weir shows that a disproportionate share of the boom has gone to corporate profits. Profits have increased over 736 % in the last decade, while contributions to governments in taxes and royalties have only increased 200%.¹²

The generosity of mining companies’ philanthropic contributions should also be examined in light of very generous executive pay. As stated above, Potash Corp donated \$756,600 to community initiatives in New Brunswick in 2011, while the company reported that its top two executives had compensation packages totalling \$12-million!¹³ Potash Corp is not an exception as mining company executives are frequently on the list of highest paid executives. A recent study on Canada’s top 100 paid CEOs shows 19 of the 100 are from the mining sector – the lowest paid on the list making over \$4-million in 2010.¹⁴

Indigenous Peoples and CSR

Across Canada, Indigenous communities are struggling to exert their authority over their territories. While some modern treaties have clarified their situation and resolved some of the conflicts, much of Canada remains disputed land. Indigenous peoples in Canada have achieved recognition that governments have an obligation to consult and accommodate their interests when making plans or decisions about major development projects like mines. This has pushed mining companies to try and reconcile their projects with Indigenous peoples on whose lands they are operating and a number of projects have advanced with the support of affected Indigenous peoples. Impact Benefit Agreements (IBAs) designed to compensate Indigenous communities for impacts to their territories and to demonstrate a social licence for the project are becoming a standard part of the development of mining operations. Outside areas covered by comprehensive land claims agreements, primarily in the North, most IBAs are not required

¹⁰ For example, Price Waterhouse Cooper is a financial services firm with strong links to the mining sector and their Vancouver office includes a specialist in use of offshore tax havens such as Barbados (<https://secure.ca.pwc.com/85256FDA004ECA86/00/EEC39CBFE619CE6A8525704A004C7D94?OpenDocument&E>). Goldcorp, one of Canada’s largest mining companies, headquartered in Vancouver, has subsidiary companies in Barbados and Cayman Islands.

¹¹ For example DeBeers Diamonds Canada: http://www.debeerscanada.com/files_3/pdf_documents/2010rts/00_rts_2010_final.pdf; see also Verificateur General du Quebec 2009. Interventions gouvernementales dans le secteur minier: http://www.vgq.gouv.qc.ca/fr/fr_publications/fr_rapport-annuel/fr_2008-2009-T2/fr_Rapport2008-2009-TII-Chap02.pdf

¹² http://www.usw.ca/admin/community/documents/files/Politcal_econ16_10.pdf

¹³ Potash Corp, 2012 Proxy Circular: http://www.potashcorp.com/proxy_circular/2012/compensation/executive/table1.php

¹⁴ H. Mackenzie. 2012. Canada’s CEO Elite 100, The 0.01%. Canadian Centre for Policy Alternatives: <http://www.policyalternatives.ca/publications/reports/canada%E2%80%99s-ceo-elite-100>

by law and so fit within our definition of CSR, even if they are motivated by legal, if ill-defined, requirements to consult and accommodate.

For example, despite legal requirements and company CSR proclamations, Indigenous communities faced with the potential of a major mineral development in a remote and relatively pristine area of northern Ontario have been rebuffed by Cliffs Natural Resources (and the provincial and federal governments) in their attempts to establish a regional and participatory environmental review process. The company has proceeded to make deals with the provincial government about key aspects of the project without meaningful involvement of the Indigenous communities.

Many IBAs include soft targets for hiring of Indigenous people and governments and industry frequently emphasize the opportunities available to Indigenous people in the mining sector. Industry contributions to training programs have helped improve employment in the mining sector, which is now the largest private sector employer of Indigenous peoples in Canada.¹⁵ However, in most cases employment targets are not reached and the positions filled by Indigenous people are often the least paid and least influential in the operation.¹⁶

IBAs and other similar agreements have improved the economic effects of mining for Indigenous Peoples and in some cases have helped increase their oversight and authority in their territories. Communities face significant challenges, however, in negotiating these agreements, and without minimum standards and disclosure of the details of the agreements, they are largely a product of the negotiating power of individual nations and their lawyers. Processes for ratifying the agreements and their use as an indicator of social acceptability/consent have also been called into question. In some cases communities sign agreements because they feel they have little choice and that a project will go ahead regardless – so they might as well try to get some benefit from it.¹⁷ Furthermore, not all companies come to the table in good faith or of their own accord; some have to be pressured through public shaming, blockades, and legal action in order to initiate consultations, especially during the mineral exploration phase.¹⁸

While negotiating agreements can be challenging, Indigenous peoples face even greater obstacles when they choose to oppose mineral exploration or mining projects on their territory. The right of Indigenous peoples to Free Prior Informed Consent (FPIC), even when it could have direct and profoundly negative impacts on a community, is not respected by the industry. Some companies have chosen to abandon plans in the early stages when faced with opposition, but more typically companies persist. The example of Taseko Mines Ltd.'s Prosperity Mine

¹⁵ Mining Industry Human Resources Council. 2010. Canadian Mining Industry Employment and Hiring Forecasts.

http://www.mininghrforecasts.ca/en/resources/MiHR_Canadian_Mining_Employment_Forecasts_July2010.pdf

¹⁶ Natural Resources Canada. 2009. Aboriginal People in Mining, Statistical Profile.

<http://www.nrcan.gc.ca/minerals-metals/aboriginal/bulletin/3605>

¹⁷ V. Wietzner 2011. Tipping the Power Balance, Making Free Prior Informed Consent Work. North South Institute: http://www.nsi-ins.ca/images/documents/synthesis_english_2011_making_fpic_work_web.pdf

¹⁸ MiningWatch Canada 2012. Submission to the UN Commission on the Elimination of Racial Discrimination: <http://www.miningwatch.ca/article/indigenous-rights-and-mining-submissions-un-committee-elimination-racial-discrimination>

project is a significant case in point. Despite an earlier rejection of the project through an environmental assessment process, Taseko continues to try and advance the project against the opposition of the T̓silhqot̓in National Government.

This conflict is, sadly, not unique. In 2006, mining conflicts in Ontario resulted in the jailing of 6 leaders from the Oji-Cree community of Kitchenuhmaykoosib Inninuwug and the former chief of the Ardoch Algonquins. Ontario has since changed the Mining Act and included provisions for consultation, but conflicts continue.

Voluntary Standards vs. Regulation

A key element in the mining CSR agenda is voluntary standards that the industry holds up to demonstrate that it is making efforts to improve its performance. It does this while at the same time actively lobbying against enforceable regulatory requirements that would be binding and would have real consequences for non-compliance. The industry's extensive lobbying effort against Bill C-300 is a recent example. A relatively modest bill that would have introduced some accountability into the federal government's support of mining companies operating in developing countries, C-300 had broad support from Canadian civil society. Industry representatives favoured the government's watered down response to a 2007 CSR Roundtable Report.¹⁹ The government's policy framework set out in "Building the Canadian Advantage" has no binding requirements or punitive measures. As it came to the final vote, industry groups launched a major political and media offensive against C-300 and the bill was narrowly defeated.²⁰

An often-cited example of "best practice" is the Mining Association of Canada's Towards Sustainable Mining (TSM) initiative²¹. Standards and reporting are mandatory for members, but they represent less than half the companies operating mines in Canada²². Another weakness is that the requirements of TSM are primarily about developing management processes rather than about real outcomes. For example the tailings management performance indicators are: "management policy and commitment; management system development; assigned accountability and responsibility; annual management review; and an operation, maintenance and surveillance (OMS) manual."²³ As there are no actual standards for key concerns like the quality of water discharged from the facilities, they can only serve to complement strong environmental regulations.

¹⁹ National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries http://www.mining.ca/www/media_lib/MAC_Documents/Publications/CSRENG.pdf

²⁰ For an overview of C-300 see: <http://www.miningwatch.ca/article/bill-c-300-high-water-mark-mining-and-government-accountability>

²¹ <http://www.mining.ca/site/index.php/en/towards-sustainable-mining.html>

²² From comparison of MAC members list from their website with 2009 list of operating mines from Natural Resources Canada: <http://www.mining.ca/site/index.php/en/about-us/members.html> and <http://www.nrcan.gc.ca/minerals-metals/business-market/canadian-minerals-yearbook/2009-review/4245>

²³ Performance Measures and Protocols <http://www.mining.ca/site/index.php/en/towards-sustainable-mining/performance-measures-a-protocols.html>

When it comes to hard or binding environmental standards, industry has been effective at preventing the development of regulations that they see as too burdensome or costly. In 2002, when the federal government was reviewing effluent regulations, the industry was able to convince the government not to lower allowable limits of metals in mine effluent, despite those limits being outdated, less strict than other jurisdictions, and higher than limits that a consultant's report deemed achievable.²⁴ As a result of poorly defined mine effluent thresholds, mines in Canada have been shown to be negatively effecting downstream fish and fish habitat despite being by and large in compliance with regulations.²⁵

The mining sector has also lobbied against strong federal legislation for environmental assessments and protection of fish habitat that it claimed unnecessarily delayed projects. The current industry-friendly Conservative government recently conducted a major overhaul of these acts and abandoned long-standing practices of public consultation and parliamentary process as they rammed the legislation through on an omnibus budget bill.²⁶ The industry congratulated the government on these changes.²⁷

Conclusion

CSR programs by mining companies in Canada have likely helped make incremental improvements in their environmental and social performance, and companies are providing more information to the public than in the past. However, as seen with Potash Corp's claims of not having any affect on local communities, the claims made in their reports cannot always be trusted. As is to be expected with private corporations, their generosity is directed primarily to their executives and shareholders, not the communities in which they operate – or Canadian society and taxpayers. The involvement of Indigenous peoples with the mining industry has brought new opportunities but also considerable risks, and there is an urgent need to establish clearer mandatory processes for decision making and ensuring the respect of Indigenous rights, including FPIC. Whether in taxation, international accountability, or environmental standards and environmental assessment processes, the industry is able to exert considerable influence over governments and has successfully contained efforts to extend or tighten existing regulations. This, despite the fact that additional voluntary measures such as those developed in the Mining Association's own TSM framework can only be effective in the context of a strong regulatory regime. Given these realities, the industry's claims of 'responsibility' sound more like green washing than green mining.

²⁴ Senes Consultants. 1999. Report on technologies applicable to the management of Canadian mining effluents.

²⁵ Environment Canada. 2012. Second National Assessment of Environmental Effects Monitoring Data from Metal Mines Subjected to the Metal Mining Effluent Regulations.

²⁶ See www.envirolawsmatter.ca for details.

²⁷ MAC News Release, April 17, 2012, MAC commends Government of Canada's plan for Responsible Resource Development: <http://www.newswire.ca/en/story/956825/mac-commends-government-of-canada-s-plan-for-responsible-resource-development>