



## Re: Review of the Office of the Canadian Ombudsperson for Responsible Enterprise

[Submitted via email to: [COREreview-revueOCRE@international.gc.ca](mailto:COREreview-revueOCRE@international.gc.ca)]

The Prospectors and Developers Association of Canada (PDAC) is the voice of Canada's mineral exploration and development industry. On behalf of over 8,000 corporate and individual members, we appreciate the opportunity to share our experience working with Global Affairs Canada and the office of the Canadian Ombudsperson for Responsible Enterprise (CORE) since it was first conceptualized in 2007. As an organization, we strive to improve responsible practices in the mineral exploration and mining industry by offering our members thought leadership and practical tools to move the industry forward.

PDAC acknowledges that business has a role to play in respecting human rights, as articulated in the UN Guiding Principles on Business and Human Rights (UNGP). The UNGP formed the basis for PDAC's human rights chapter of e3 Plus, updated in 2014, and rebranded to [Driving Responsible Exploration](#) in 2024. In addition to the role of business, Canada has formally acknowledged its responsibility as a host country to encourage responsible business conduct abroad, first through its Corporate Social Responsibility Strategy for the Extractive Sector Abroad, first announced in 2009 and updated in 2014, and more recently through its Responsible Business Conduct (RBC) Abroad Strategy (2022-2027). The RBC Strategy balances the approach with pillars of prevention, access to remedy and targeted legislation.

The operation of the CORE falls under the concept of 'access to remedy'. Namely, creating opportunities for communities outside of Canada that believe they have been negatively impacted by Canadian companies to raise their concerns, and have those concerns responded to by Canada. There are three mechanisms through which communities outside of Canada can seek 'access to remedy'. Two mechanisms are non-judicial, the Office of CORE and the National Contact Point (NCP) system, the third is judicial, that is the Canadian courts as a forum for filing complaints against Canadian companies.

### **PDAC Observations**

Throughout the 3 years their portal was open, the CORE received over 300 inquiries and actively worked on approximately 20 admissible complaints. Among these, 8 were related to the mining industry, with 2 companies named: GobiMin and Dynasty Gold. Both companies had projects in the Xinjiang region of China, where accusations were made regarding Canadian companies enabling Uyghur forced labour.

[GobiMin](#) sold its interest in its Chinese subsidiary in 2022, thus exiting the high-risk Xinjiang region. The company participated in the CORE's Initial Assessment process and, following the release of the Initial Assessment Report, successfully implemented the CORE's follow-up recommendations, such as updating its responsible exit policy. The CORE subsequently issued a follow-up report and closed the case, noting a non-judicial "Alternative Dispute Resolution" (ADR) process.

[In contrast, Dynasty](#) did not participate in the CORE's Initial Assessment or Investigation process. From 2003 to 2008, Dynasty Gold entered into a joint venture agreement with a Chinese partner. After this period, Dynasty reported publicly that the Chinese partner became uncommunicative, and Dynasty's 70% interest in the project went unacknowledged. In 2016, Dynasty initiated legal action in the Xinjiang High Court, seeking compensation or restoration of the joint venture. In the CORE's Final Report, released in March 2024, it was determined that Dynasty still maintained its presence and influence over



the project past 2019, leading to the conclusion that Dynasty is implicated in human rights abuses. The CORE issued follow-up steps for Dynasty to complete by September 2024.

While the two cases illustrate the varied approaches companies can take in response to these serious issues, the CORE has a responsibility to ensure accuracy in advising the companies and the Canadian government on how to uphold human rights and improve working conditions for affected communities. Ensuring sufficient funding and case-specific resources are essential to support this continued effort. By fostering broader collaboration, the CORE can more effectively address human rights concerns and fulfill its mandate.

Although PDAC has consistently collaborated with CORE staff and showcased [their work on our website](#) and [at our annual convention](#), there remains an opportunity for the CORE to strengthen its investigation and recommendation strategies such as utilizing PDAC's Driving Responsible Exploration guidance: which is one of few free resources available specifically for junior mineral exploration companies. As an industry association, we felt a lack of inclusion in the CORE's case-progression process, despite our participation in the Multi-Stakeholder Advisory Board and Quarterly Stakeholder Meetings. These meetings often consisted of superficial updates, already released in their public reports, that did not effectively engage our knowledge or expertise. This has hindered our ability to provide valuable input and support the collective goals of the industry, and we urge a shift towards a more inclusive approach that genuinely incorporates the diverse perspectives and expertise within our association.

Our observations highlight several areas of concern:

### **Supporting Canadian Businesses**

The creation of an institution that does not balance improving access to remedy with supporting the competitiveness of responsible Canadian companies may lead to a scenario in which harm is done to responsible Canadian mining companies and where communities are not actually any better off. For example, frivolous or vexatious claims can lead to reputational damage, and a drop in share price (which, for smaller companies could have a significant effect). Moreover, the exit of a responsible Canadian company, for which harm has not been definitively established, could result in decreased investments in the community, job losses, and a gap possibly filled by a less accountable company.

There is a stark difference between an irresponsible operator and a responsible Canadian or Canadian partner company operating abroad and hence their impacts on the Natural Environment and Human Rights. Statistics on health and safety can give a glimpse into respect for safe working conditions and respect for human rights. PDAC is a member of the International Council on Mining and Metals (ICMM), which represents about one-third of the global metals and mining industry. The organization assesses the safety performance of its members across various commodities and jurisdictions worldwide. The ICMM reported [33 fatalities in 2022](#). For the same reporting period, the National Mine Safety Administration of China shared that there were [245 reported deaths](#) in coal mining alone, potentially more unreported. This is an order of magnitude larger than ICMM's globally encompassing report, and two orders of magnitude greater than Canada's mineral exploration sector, which saw [three incidents resulting in fatalities](#) in 2022. This basis for measurements and their correlation to human rights are not exactly equivalent, however, in the vast majority of cases Canadian companies operate to the highest standards both within and outside of Canada.

PDAC and our Driving Responsible Exploration guidance, along with other cohort associations like the Mining Association of Canada (MAC) (with their Towards Sustainable Mining initiative, which is [consolidating](#) with other responsible standards like ICMM, World Gold Council and Copper Mark) are built expressly to help accelerate the adoption of best practices in regions that may have less regulatory oversight and to export Canadian values abroad. The PDAC would also like to highlight the work Engineers Without Borders Canada has completed with support from GIZ Deutsche Gesellschaft für Internationale Zusammenarbeit on “[Guidance for Disclosure on Human Rights Due Diligence in Mining Sector Procurement](#)”. Promoting voluntary responsible conduct guidance and standards offers several advantages over having no standards at all.

The office of the CORE can use these pre-existing Canadian-made tools to assist companies undergoing the review process. By strategically integrating insights from industry associations and NGOs, the CORE can conduct thorough investigations while fostering an environment where businesses can thrive competitively and ethically.

### **Non-judicial process**

Non-judicial access to remedy is crucial for addressing potential human rights abuses for several reasons. It provides an avenue for mediation, and alternative dispute resolution, which can help prevent further violations and promote reconciliation. Especially for individuals who may not have the ability to navigate court systems. Non-judicial remedies can be more accessible and user-friendly, ensuring that affected communities can seek redress for violations. Furthermore, non-judicial mechanisms can incite changes faster than courts and address a broader range of grievances, including those that may not be covered by law. This can include social, cultural, and economic rights that might be overlooked in formal settings.

For a non-judicial entity to be effective it should promote participation without the threat of subpoenas or being held in contempt. Powers to compel is a strictly judicial process that is used to assign fault, which is beyond the scope of an ombudsman's services. Human rights issues often involve multiple stakeholders, making it challenging to assign blame definitively. The priority should be on addressing the needs of victims and ensuring they have access to effective remedies. Focusing on support for communities and companies allows for a more constructive approach that can lead to systemic change.

PDAC, and our partner associations such as MAC, have commented on the ongoing considerations of granting the CORE quasi-judicial powers in the past (please refer to Appendix A: Letter to Minister Carr and Appendix B: Risk Assessment Guide for Country Visits). The years-long campaign for judicial powers ultimately hurt the effectiveness of the Office of the CORE. If the focus remains solely on what is lacking, it may prevent the office from recognizing and leveraging existing strengths or exploring alternative solutions. If an office publicly admits to not having the necessary tools but fails to take steps to address the issue, it can lose credibility among both the complainants and the companies it is asking to come to the table, undermining its influence and authority. If renewed the CORE should present full confidence in its ability to hear and guide grievance mechanisms within its mandate.

This means there must be alternative motivations for industry participation, this can be through studies and communication on companies that prioritize human rights and gain a competitive advantage, attracting socially conscious consumers and investors. The office should also look into leveraging other stakeholders including investors, customers, Industry associations and NGOs. This requires funding.

### **Notable commitment from the Government of Canada**

Many stakeholders—including companies and civil society—have perceived CORE processes to date as overly adversarial and it is essential to shift towards more collaborative engagement, which can only be realized through a notable commitment from the Government of Canada, including adequate funding and cultural support for the CORE's mandate.

In addition to funding for the dispute resolution process, the CORE requires resources to establish robust marketing and social media strategies, as well as to enhance access in regions at risk of human rights abuses. Strengthening the CORE's mandate with sufficient financial and operational resources would enable it to fulfill its promise of enhancing responsible business conduct among Canadian enterprises abroad. Adequate funding would support independent investigations, alleviating concerns about perceived guilt in voluntary processes. For example, cross-departmental staff can use both Global Affairs Canada's resources on responsible business conduct as well as Public Safety Canada's resources on *Fighting Against Forced Labour and Child Labour in Supply Chains* to assess companies on their declared commitment to ethical practices.

Furthermore, outreach efforts in vulnerable areas are vital for raising awareness about human rights issues and improving communication with affected communities. Direct engagement with at-risk populations fosters trust between the CORE and those impacted. Building this trust takes time, underscoring the need for a long-term commitment from the Government of Canada. By providing the CORE with adequate funding, cultural support, and a clear long-term vision, we can ensure that it is well-equipped to make a meaningful impact on corporate practices and uphold human rights standards.

### **Expansion of covered sectors**

During the 2015 election, a commitment was made to create an ombudsperson specifically for the extractive sector, but the potential for human rights abuses is not an extractive sector-specific issue. When the ombudsperson's office was established, it was slightly expanded to include the garment sector. Interestingly, most of the complaints and cases that were able to move forward in the CORE's process pertained to the garment sector. Even more notable is the large number of inquiries that were deemed inadmissible. It is possible that some of the complaints were dismissed because they did not fall under the mandate's designated industries. If the mandate is renewed it is suggested that the scope of industries covered be broadened to further encompass non-extractive industries.

A balance must be found between advocating for human rights in all sectors while leveraging the expertise of specialists in key areas. A sector-exclusive mandate is a self-imposed limitation, whereas investigating all sectors allows for the identification of systemic issues that may affect multiple industries, enabling a more comprehensive understanding of human rights challenges. Inevitably there will be certain industries - such as textiles, electronics and extractive sectors - that are more prone to human rights scrutiny due to the nature of their operations and the inherent risks involved, whereby having dedicated staff and industry experts like PDAC on retainer will prove useful.



### **Planning for the evolution of the office**

It would be inappropriate to outright close the office of the CORE, particularly given there are actions that have not been fully resolved, as this would not only halt ongoing investigations but may deter future whistleblowers or victims from coming forward. In general, the end of the 5-year mandate and public consultation comes subsequent to the release of last-minute reports, such as the Dynasty Gold Final Report - which was immediately refuted by Dynasty and is still waiting for a response. This accusation and demand for apology/retraction create tangible market impacts that impugn the company and may create future liability issues that could be directed toward the CORE. These are hallmarks of a lack of transitional planning.

Having fallen short of developing a transition plan, a mandate renewal timeline and providing clarity around how outstanding issues will be resolved must be prioritized to ensure that all current cases are either concluded or handed over to another comparable organization and set up a mechanism for accountability during and after such a process.

PDAC strongly encourages Global Affairs Canada to consider how to keep the dialogue open and maintain relationships with stakeholders. Collectively it is possible to identify ways to support human rights work in the future, whether through funding, partnerships, or advocacy.

### **In conclusion**

While the office of the CORE has the potential to be a powerful advocate for human rights, its current operations and effectiveness have been disappointing. Instead of empowering companies to uphold human rights standards, the office was crippled by starting operations during a global pandemic, and inefficient use of stakeholders. To truly fulfill its mandate, it must prioritize access to remedy, stakeholder engagement, resource utilization, transparency, and accountability.

PDAC advocates for the continuation of a mandate dedicated to encouraging companies to follow the UN Guiding Principles and the OECD Guidelines and advising Canadian companies on ways to create responsible business practices and policies. PDAC emphasizes that its effectiveness hinges on receiving comprehensive support from the government. To achieve meaningful progress, it is essential to see an increase in confidence, funding, and outreach that enables the CORE to operate effectively.



**Appendix A:**

MAC & PDAC Letter to Minister Carr re: CORE - April 30, 2019



MAC & PDAC Letter  
to Minister Carr.pdf

**Appendix B:**

MAC & PDAC Risk Assessment Guide CORE Non-Review Based Country Visits – November 11, 2021



Risk Assessment  
Guide Non Review E

Double-click the attachment to open or right-click and select “Open file”.

If unsuccessful in opening the appendixes please contact Jeff Killeen, PDAC Director, Policy & Programs ([jkilleen@pdac.ca](mailto:jkilleen@pdac.ca)) or Nicole Kulp, PDAC Analyst, Sustainability ([nkulp@pdac.ca](mailto:nkulp@pdac.ca)) for a direct copy of the files. We appreciate the time taken to review our submission and are available for any additional comments or questions regarding it.