

Canadian mining law: a role model?

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Canada

Canada 9.984.670 km² expanse, touching the Atlantic in the east and the Pacific in the west, bearing all the way north until the Arctic Coast. A land of great diversity both in its population, as 3,8% of the Canadian citizens are of indigenous heritage, as well in its environment. Canada is looking at 60% of the boreal forest and 30% of its temperate forest still intact, accompanied by a remarkable biodiversity both on their lands and in their waters.

Canada's population is mainly concentrated in a 350 km broad strip of land near the US border, leaving large parts of the north almost unsettled, territory with an argosy of natural resources. Hence an area with plenty potential for economic interests.

Minerals and Mining

The "Minerals and Metals Sector" contributed C\$40 billion to Canada's gross domestic product in 2008, paid about C\$11.5 billion in taxes and royalties and accounted for 19% of the annual goods exports, which makes Canada one of the leading countries in mining. Furthermore Toronto handles 81% of the world's mining equity transactions, while Vancouver is host to the world's leading cluster of exploration companies with 1300 companies listed in 2009. And no wonder Canada's mining taxes show that Canada supports mining. The provincial and territorial tax rates vary from 10% to 16%, with 15% on a federal level. Those levels are not incredibly low but the taxes are low starting, allowing the mining companies to recover their expenses before going into full payment. In Addition they are all profit based making the mining companies pay taxes that are generous but never more than they are able to pay.

But mining does not only have huge impact on the economy. The mining industry is also the largest employer for Aboriginal communities. In 2006 7,5% of the potential mining labour was used by Aboriginal people, not only working in their territory but with them.

Surprisingly although, Canada is hosting a mining industry as big as it is, an industry with a questionable reputation, Canada is globally recognized as a country with high ethic standards environmental wise as well as regarding their indigenous people.

But how so?

Canadian Environmental Law

One part of the answer is to be found in Canada's laws and regulations.

Although not unproblematic, because of the distribution of powers on federal and provincial respectively territorial levels. Canada has, at least since the Canadian Environmental Assessment Act, 2012 (C.E.A.A., 2012) has been established, a solid and sophisticated "net" of laws protecting both its environment and by that also its population, from the surely existing dangers of the mining industry and their land operations.

Tools

By taking a look at the variety of laws, a pattern of tools seems to emerge.

Namely: "Obligations" both for the mining industry as well as the authorities, "Information" both gathered as well as provided, which leads us as a base directly into the next "Participation" of the public and last but not least "Power" in form of different institutions, established in a variety of acts to enforce the therein established regulations partly through orders, partly through fines and partly through powers in form of rights.

As mentioned before these tools are to be found in a wide range of laws, but especially in one the also before mentioned Canadian Environmental Assessment Act, 2012.

Lets have a closer look at those so called "tools" that Canada uses.

Obligations

Starting with Obligations, there are obligations both for the authorities regulating as well as for the "permittees" planing a so called "Land use Operation".

Obligations addressing for example a mining company are mainly used to regulate the measures that shall be taken during the mining process as well as measures after the ending of the operation. Like restoration of the "Permit Area" or any channel and bed of a stream to their original alignment. (Subsections: 13 (1) (b) & 18 Territorial Land use Regulations (T.L.u.R.))

Obligations addressing the authorities are mainly used for gathering information and on a second and third level to provide this information to the public, which than has to be granted opportunities to participate mainly in a form of commenting on that information but also through public hearings (Subsections: 6 a, 7, 9 (c), 45 (3) C.E.A.A., 2012). Making the tool Information and Participation part of the authority's Obligations at the same time.

Information

But where do those information come from and what exactly do they inform about? Information as used in this article primarily refers to the way it is used in the Canadian Environmental Assessment Act, 2012. Therefore information means all infos linked to an environmental assessment that shall be undertaken before any "physical activity", for example reports by the agency that has been commissioned to conduct the assessment. Furthermore descriptions of the designated project, the begin of the assessment, decisions made by the agency or any governor council as well as any documents established just as any arrangement or action linked to it, have to be posted on the internet site, thereby giving the public a permanent overview about designated projects and the status about the investigations about them. The aim of an environmental assessment is to evaluate whether a for example mining operation is likely to cause significant adverse environmental effects and whether they

are justified in the circumstances or not. (Subsections: 6 (a), 7, 9, 10 (a) (iii), 12, 17, 41 (6) C.E.A.A, 2012)

Participation

When it comes to the Participation there are especially two opportunities for the Public to participate. For one thing there is the possibility to comment any posted information, for another thing every hearing that is held has to be public and the C.E.A.A, 2012 rules that the comments posted have to be considered during the assessment process as well as while deciding if a review panel has to be consulted. Combining the aspects of Information and Participation the public is able not only to have a transparent look upon what is happening on their lands but also to interact, interfere and influence decisions and the decision making process, all reassured by a founded program to facilitate the participant of the public. (Subsections: 10 (a) (iii), 19 (c), 24,25 (a) (b), 45 (3), 58 (1) C.E.A.A, 2012)

Power

To protect the regulations established, enforce them and assure adherence several acts like the Canadian Environmental Assessment Act, 2012, the Territorial Lands use Regulations, the Canada Water Act and the Arctic Waters Pollution Prevention Act (A.W.P.P.A.) all establish institutions to execute certain "Powers". Namely there are Agencies, Water Quality Management Agencies, Inspectors, Pollution Prevention Officers and Persons to prevent Non-Compliance with an Act. Using fees for offenses between C\$200.000 and C\$400.000 in the C.E.A.A, 2012 and up to C\$5.000 in the Canada Water Act (C.W.A.), the right to enter any place at any time, among the right to gather information as needed, order ships to help with clean ups, permit terms and conditions for operations, cancel permissions and to give direct orders for the purpose of compliance of those acts, violations become unlikely and even more important unpalatable. (Subsections: 90 ff.94, 99 (1) & 103 (1) C.E.A.A; Sub.: 15 (2) (b) and (4), 26 (1) (a) (b) and(c), 30 (1) C.W.A; Sub.: 14 ff. A.W.P.P.A.; Sub.: 31 (1), 38 (1), 41 (1) T.L.u.R)

In cases where things go wrong principle 1 of the Canada Wide Accord on Environmental Harmonization called "Polluter Pays Principle" comes in to effect.

Doing all this Canada seems to strictly strive for the achievement of the objects and principles of the Canada Wide Accord on Environmental Harmonization.

Objects and principles like the enhancement of environmental protection, the promotion of sustainable development and the principle of openness, transparency and effective participation.

Labour Code

But mining is not only dangerous for the environment and people not directly involved it is also extremely dangerous for the people working in and around mines every day. The Canada Labour Code (C.L.C) tries to lower the risks as much as possible and looks quite good doing it. The code directs different safety measures that have to been taken. Among others the insurance of the structure of buildings, the posting of printed safety related materials established by the safety officer, providing of first aid facilities, potable water, ventilation and safety training for the employees. For execution and investigation the code also establishes safety officers that can even set out a action and work if considered to dangerous. Also the Canada Labour Code establishes a tight-knit network using the above mentioned "Tools" to ensure compliance.

(Subsections: 123.3 (1)& (2), 124, 125, 125.1 (a), 125.3 (c), 127 (1), (7)& (9), 128 (1)& (8), 129 (4), 140 C.L.C)

Aboriginals

Also Canada pays special attention to particular and more delicate topics namely Aboriginals and water. There is the **Arctic Waters Pollution Prevention Act** and the **Canada Water Act** both focusing on the protection of Canada's precious water resources.

Aboriginal people are especially recognized on various occasions. Working closely with them is one of the 13 ground principles phrased in the **Canada Wide Accord on Environmental Harmonization**, and subsection: 5 (1) (c) (i) & (iii) **C.E.A.A, 2012** explicitly recognizes Aboriginal people and their rights on *physical and cultural heritage and their use of Land for traditional purposes*. But there is more, a wide range of mechanisms established to protect indigenous interests.

For example the "Aboriginal Human Resource Council" bringing together industry stakeholders and community leaders, or the "Mining Video" followed by the "Mining Information Kit" aiming at a well informed indigenous population.

International level

Taking all this into account it seems nothing but surprising that Canada refused to sign the **ILO 169** which requires, among others that the governments of the signing nations keep the resident indigenous communities well informed about the mining projects that are planed or conducted on their lands.

Neither did Canada, and this very unfortunately, enact the **Bill C-300**, as it failed the third vote in the Canadian House of Commons. **Bill C-300** implements a number of key recommendations from the March 2007 Final Report of the Corporate Social Responsibility (CSR) Roundtables, and would have set human rights ground rules for canadian mining companies working in developing countries. Although Canada played a important role in developing the OECD guidelines for multinational enterprises and invested C\$350.000 Corporate Social Responsibility (CSR) initiatives. These efforts and numbers seem vanishingly low compared to the 8300 mineral properties worldwide with C\$66 billion invested abroad by canadian mining companies. Refusing to launch a law saying: *"The purpose of this Act is to ensure that corporations engaged in mining, oil or gas activities and receiving support from the Government of Canada act in a manner consistent with international environmental best practices and with Canada's commitments to international human rights standards"*, the "umbrella" of laws protecting the canadian environment and the people will continue to protect those only being "privileged" enough to have been born in the right country while everybody else gets wet.

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This Article does not claim integrity but reflects his personal first impression reading through federal Canadian laws.