

The International Code Of Ethics For Canadian Business

An Audit Format Compliance Review

**Supplement to *4 Companies and a Code*, an article published in Corporate Knights Magazine,
(April 28, 2003)**

I. INTRODUCTION

Now that the Corporate Knights article—*Four Companies and a Code*—has been published, a final summary report of the International Code of Ethics for Canadian Business (ICE) review can be distributed to each of the four participating companies – Enbridge, EnCana, Nexen and Talisman – providing a final summary of the scoring for each company, as well as a short discourse on the process and analysis.

The rationale for this exercise was relatively simple. With domestic criticism of Canadian companies' international operations relative to social and environmental issues being a regular exercise, it was assumed that room exists within the Canadian media context for a third-party review of how well a few Canadian companies are meeting the expectations of their domestic citizenry while operating outside our national boundaries.

Michael Rea (MHR) therefore approached Corporate Knights to work in partnership to conduct an audit-based review of the four companies, using a methodology not too dissimilar to the way in which Sustainability Reports (aka Corporate Social Responsibility, EHS or Non-Financial Reports) are verified. The "audit" was formed around compliance to the "Principles" set out in ICE (a full copy of ICE is included as Appendix I at the end of this document).

Although many international codes of conduct already exist, including The Global Compact and the ILO Standards for Multinational Corporations (among many others), ICE was designed to provide a "Made in Canada" road map for managing conduct outside Canada. It attempts to be a comprehensive, yet simple code of conduct that Canadian companies could employ to ensure that their offshore enterprises adhered to the same standards of behaviour as their 'in-Canada' divisions, while attempting to identify core areas of focus. These include:

- Environmental Protection and Stakeholder Engagement;
- Human Rights;
- Business Conduct; and,
- Workers Rights, Health & Safety.

Unfortunately, with some notable exceptions, few companies have employed the ICECB to either monitor or manage their activities outside Canada, while it appears that few, if any, groups have lobbied companies to ensure that the code is applied uniformly. Moreover, little has been done to test the effectiveness of the code in measuring performance either within, or between industries. Nonetheless, it was decided that ICE was perhaps the most useful tool to be employed for this exercise, despite the fact that only 2 of the four participating companies are "signatories" of the code.

At the outset, it should be reiterated that this exercise was intended to address several objectives:

- 1) to draw attention to the existence of the International Code of Ethics for Canadian Business (ICE);
- 2) to demonstrate that companies can be measured against ICE for the purposes of highlighting strengths and weaknesses; and,
- 3) to provide a high level benchmarking review of the four participating companies, relative to their ICE compliance

The projected outcomes of the exercise were three-fold:

- 1) a presentation to each company to discuss the findings of the research, as well as to offer an opportunity to confirm or refute data;
- 2) the article published in Corporate Knights' April 28th edition
- 3) a summary report of findings, including the comments provided in each of the four presentations.

2. METHODOLOGY

Determining whether a company is behaving in a manner consistent with measures of “Good Corporate Citizenship” is no easy task, and typically requires several weeks of detailed investigation into the three core elements of Corporate Responsibility:

- SAY** What the company says it is doing...i.e., its policies, procedures, press releases and corporate reports;
- DO** What the company is actually doing...how it is applying and/or implementing these policies;
- SEEM** What the company is perceived to be doing...how well key stakeholders believe the company is living up to the promises and values expressed in its policies and procedures.



In order to assess whether EnCana (in Ecuador) and Enbridge, Nexen and Talisman (all in Colombia) were living up to expectations of corporate citizenship in Colombia, Corporate Knights conducted more than 100 interviews with various stakeholders to determine if the companies were sufficiently juggling these three elements (Appendix II).

In short, various representatives from government agencies (host country and Canadian), Non-governmental organizations (NGOs), community-based organizations (CBOs), civil society and the corporate sector, were interviewed to determine whether or not the four Canadian companies:

- a) have appropriate policies and procedures in place;
- b) can demonstrate application of these policies; and,
- c) are perceived to be living up to stakeholder expectations.

To facilitate interviews with groups such as the Ministries of Environment and Energy, and NGOs like Transparency International, the Principles and Business Objectives of ICE were broken down into relatively rudimentary questions that attempted to maximize fact over fiction, and limit the amount of personal bias affecting the results of the research conducted. Unfortunately, as in all exercises of this nature, it is extremely difficult to comprehensively filter out the effects of perception over reality. As in the case of EnCana’s operations in Ecuador, it was extremely difficult to fully define the barrier between “accusation” or “allegation” and fully verifiable “proof”. This was further complicated by limits to cooperation by EnCana’s pipeline consortium partners at Oleoducto Cruzado Petrolcas (“Crude Oil Pipeline”, or “OCP”).

In fairness to EnCana, it was decided by Corporate Knights that in order to more accurately report “fact” over either “fiction” or “suspicion”, special consideration would be given to EnCana’s non-pipeline, or “up-stream” activities, as conducted by AEC Ecuador. As such, EnCana is rated as Ec-OCP (pipeline division) and Ec-AEC (exploration and production division).

3. PARTICIPATING COMPANIES

Although Enbridge, EnCana, Nexen and Talisman all “participated” in this study in a highly transparent fashion (including unparalleled access to various public and secure documents), none of the companies sought out, requested, or in any way contracted Corporate Knights to conduct this assessment. The companies were chosen for their profile, relative similarity of operations...all being within the “Oil and Gas Sector”...and their geographic location. To simplify the assessment, it was deemed important to find four companies that were operating in close proximity to one another and within the same sector.

Even though all four companies are “oil companies”, it is important to note that the conditions under which each company is operating in either Colombia or Ecuador are as diverse as the companies themselves.

- Enbridge – Operating as part of OCENSA, a consortium managing an existing pipeline in Colombia. Not engaged in development activities and therefore effecting minimal social or environmental impacts outside Bogota.

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Relatively few 'direct' employees in Colombia, and operating with minimal 'control' of the consortium due to the nature and structure of OCENSA.

Not a "signatory" of the ICECB.

- EnCana – Operating both as part of OCP, a consortium managing a pipeline currently under construction in Ecuador, and as AEC-Ecuador where "upstream" activities, including oil exploration and production, are currently under way. Due to the high degree of development activities, EnCana is highly exposed to social and environmental impact risks, and therefore is constantly under critical review by numerous NGOs and special interest groups. Due to the combination of its status as the largest foreign direct investor in Ecuador, and its significant number of direct (AEC) and indirect (OCP) employees in Ecuador, EnCana is a much higher profile company than any those reviewed in Colombia.
- Not a "signatory" of the ICECB.*

- Nexen – With relatively few employees in Colombia, Nexen's exploration activities (moving towards the development of wells) are primarily conducted using local contractors. Largely unknown in Colombia, due to the size of its operations and strategically-designed low profile (for security purposes), Nexen is currently exposed to relatively minimal social and/or environmental risks.
- Co-author and "signatory" of the ICECB.*

- Talisman – The most recent arrival to Colombia, with minimal seismic and exploration activities, Talisman has the fewest number of direct employees, and the least exposure to social and/or environmental risks. With the exception of a small National office, external contractors are the sole source of operational activity within Colombia.
- A "signatory" of the ICECB, and previously audited against the code with respect to its global operations (with significant attention paid to Sudan).*

Of all the companies reviewed, EnCana appears to be facing the greatest degree of reputational risk exposure. Not only is the OCP pipeline still under construction (unlike Enbridge's OCENSA pipeline in Colombia), which means that OCP is under a period of extremely high environmental impact, but the sociopolitical environment under which EnCana is operating in Ecuador is far less 'advanced' than that of the companies operating in Colombia. As various stakeholders asserted, including representatives from Transparency International, Ecuador is plagued by much higher levels of corruption and political instability than Colombia. Furthermore, the regulatory frameworks in Colombia are in many respects "world class", including the standards established for the protection of the environment. As Ambassador Duval of the Canadian Embassy stated,

"I've been told that environmental legislation in Colombia appears to be stricter than in Canada."

The implication is that as legal and regulatory frameworks become more advanced, the degree of ambiguity and/or confusion decreases. In Colombia, it was evident that all parties, including environmental NGOs, could agree on expectations whereas parameters in Ecuador were much more open to interpretation.

EnCana also appears to have exposed itself to a situation in which its reputation is under the control of too many external agents, a situation that appears to be directly affecting their relationships with several stakeholders. It appears, at least within the research conducted by Corporate Knights, that EnCana could afford to heed the advice of *Drivers & More*, a South African shipping company. Their ads read,

"Outsourcing is about getting rid of a few things. Your reputation shouldn't be one of them."

Consortium and partnership agreements are not too dissimilar to outsourcing arrangements. When companies invest in a partnership, it extends far beyond capital and technology and includes the critical element of reputation. As Rene Bucharem, President of the Petroleum Forum of Ecuador, stated,

"Ecuador has definitely benefited by AEC's (EnCana's) involvement in the OCP pipeline. Along with its technology and investment, AEC brings a level of credibility to the process and raises people's expectation that the pipeline will be completed on time, with as limited an environmental impact as possible. AEC's involvement in this high profile project is an excellent marketing tool for the Government of Ecuador, a government that is working hard to attract more FDI."

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A current concern for EnCana is that OCP, their consortium partnership, does not appear to be doing all it can to protect EnCana's reputation. Furthermore, EnCana does not appear to be working hard enough to ensure that OCP respects the reputational investment EnCana has made. For all the success that EnCana's AEC-Ecuador division is having with respect to adhering to the ICECB, EnCana's OCP partners appear to be creating, at bare minimum, "perception complications"

4. OUR FINDINGS

The approach taken to assess the participants is consistent with what Corporate Social Responsibility (CSR) consultants would term a "Negative Assurance Audit Protocol". That is to say, the burden of proof was not as rigorous as to be able to confidently state that,

"All evidence indicates that compliance is absolutely assured."

To be able to state this would be "Positive Assurance".

For this exercise, the evidence sought was directed at finding sufficient comfort to be able to indicate that,

"No evidence was found to suggest that compliance is not assured."

This is "Negative Assurance".

Given that the physical security risk in Colombia is such that few, if any, of Enbridge's, Nexen's or Talisman's employees ever visit operations outside Bogota, it was impossible for Corporate Knights to fully assure that field operations were as good, or bad, as the interviewed stakeholders indicated. As such, it was impossible to conduct a "Positive Assurance" exercise. Moreover, it was impossible to afford perfect scores (4.0 of 4.0) for several items due to the researchers' inability to field test assertions.

For example, although no company received a score that would suggest zero complicity with respect to fraud or corruption, one should not conclude that any company was found to be complicit in any incident. In this environment of "Negative Assurance", a 4.0 would not have been possible.

ICECB SCORING MATRIX

| | | | | | |
|--|-----|-----|-----|-----|-----|
| | 2.0 | 2.5 | 3.0 | 3.5 | 4.0 |
|--|-----|-----|-----|-----|-----|

"Assurance Scoring" occurs on a scale of 0.0 through 4.0, where 0.0 to 1.5 equals "Bad", 1.5 to 2.5 equals "Fair", 2.5 to 3.5 equals "Good" and above 3.5 equals "Excellent". In many cases, "Excellent" would be consistent with "Best Practice" (based on the project experience). A score of 3.5+ indicates slightly better than 3.5, while 3.5- denotes slightly less than 3.5.

Tables 1 through 5 provide the full complement of scores for all four companies. The scores highlighted by colour are the summary scores as presented in the Corporate Knights article (*Four Companies and a Code*, April 28). Each table is supported by high-level comments provided to one or more participating companies, as well as an example of strength and weakness for each principle.

Community Participation

I believe it was Sun Tzu who recommended,

"Keep your friends close...but keep your enemies even closer."

When it comes to stakeholder engagement, it is absolutely critical that companies have a clear understanding of who their key stakeholders are: not just the obvious contractual or operational stakeholders, but all key stakeholders. This requires a significant level of effort in conducting a stakeholder identification and prioritization exercise: mapping out all "primary", "secondary" and "tertiary" stakeholders based on their level of:

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Concern – How concerned are they about the company's activities?

Affect – How affected are they by the company's activities?

Impactability – To what degree can the stakeholder impact the company's ability to conduct its work?

Although a fairly militant environmental activist group may not be directly affected by an oil rig, it may possess high levels of both "concern" and "impactability" and therefore may be rated (and/or ranked) among either the "primary" or "secondary" stakeholder groups. It may therefore warrant at least an annual audience with the oil rig's operators to discuss their concerns, and perhaps allow the company to refute false assertions. This is extremely important in countries such as Colombia and Ecuador where ecotourism is a major economic contributor. As Enbridge stated,

"In Canada, addressing criticism is more often about clarifying data and/or misperceptions. Elsewhere, we need to keep an eye on less than credible sources that don't always project a fair representation of what is occurring."

With limited exceptions, all four participants demonstrated extremely comprehensive Community Participation, including stakeholder engagement, programs.

TABLE 1: ICE PRINCIPLE 1A – COMMUNITY PARTICIPATION

| | Talisman | Nexen | Enbridge | EnCana / OCP | EnCana / AEC* |
|---|----------|-------|----------|--------------|---------------|
| 1.1 We will strive within our sphere of influence to ensure a fair share of benefits to stakeholders impacted by our activities. | | | 3.5 - | 2.0+ | 3.0 - |
| <i>1.1.i Are formal corporate policies and procedures in place to ensure that impacted communities receive fair consideration for benefits (Corporate Social Investment, Local Supply Sourcing and Local Employment)?</i> | 3.5 | 4.0 | 3.5 | 2.5 | 3.0 |
| <i>1.1.ii Do stakeholders receive fair and meaningful support and/or benefit in the communities in which the company operates?</i> | 3.5 | 3.0 | 3.0 | 1.5 | 3.0 |
| 1.2 We will strive to ensure meaningful and transparent consultation with all stakeholders and attempt to integrate our corporate activities with local communities as good corporate citizen | 3.5 - | 3.5 - | 3.0+ | 2.5 | 3.0 - |
| <i>1.2.i Are formal corporate policies and procedures in place to ensure that local communities are consistently, proactively and fairly engaged?</i> | 3.5 | 4.0 | 3.5 | 3.5 | 3.0 |
| <i>1.2.ii Are stakeholders actively identified and prioritised?</i> | 3.5 | 3.0 | 3.0 | 3.0 | 3.0 |
| <i>1.2.iii Are stakeholders actively engaged in a fair and meaningful manner?</i> | 3.0 | 3.0 | 3.0 | 1.5 | 3.0 |
| <i>1.2.iv Do stakeholder concerns receive fair and meaningful consideration within the organization, including the affecting of change?</i> | 3.5 | 3.0 | 3.0 | 2.0 | 3.0 |
| 1.3 We will strive to provide meaningful opportunities for technology, training and capacity building within the host nation | | | | | |
| <i>1.3.i Are formal policies and procedures in place to identify opportunities for technology transfer and capacity building within the host nation?</i> | 3.5 | 3.5 | 3.5 | 3.5 | 3.5 |
| <i>1.3.i Is technology transfer and capacity building occurring in an ongoing and strategic manner?</i> | 3.5 | 3.5 | 3.5 | 3.5 | 3.5 |
| <i>1.3.ii Are technology transfer and capacity building efforts affecting positive change within the host nation?</i> | 3.5 | 3.5 | 3.5 | 3.5 | 3.5 |
| <i>1.3.v Are technology transfer and capacity building efforts are being supported by support for secondary and tertiary industry development through local preference sourcing agreements?</i> | 3.5 | 3.5 | 3.5 | 3.5 | 3.5 |

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Weakness: EnCana's pipeline consortium, OCP, was widely criticized for what was deemed an "insincere consultation process", where many argued that decisions had been made prior to any consultation occurred. This included consistent criticism of the selection of the pipeline route, and the determination of what community development programs would be offered to communities. In fairness to EnCana, the majority of the evidence indicates that AEC-Ecuador has been employing a much more successful, and rigid, consultation process. This includes an award bestowed upon AEC-Ecuador by the Ministry of Environment.

Strength: Talisman was able to comprehensively demonstrate a "Best Practice" community consultation program, as implemented by its Community Development (CD) partner agency (local contractor). Each of the 54 communities within its seismic operating areas were afforded community workshops where, seismic process, environmental risks, CD needs, and other topics were covered. Moreover, these consultations resulted in 10 community environmental monitors ("watch dogs") were identified, and employed to offer the communities a greater level of assurance that Talisman's activities would not compromise the integrity of the ecosystems in their operating areas. Moreover, of the 54 communities consulted, 4 did not provide right-of-way access for seismic activities. Despite the lack of approval, Talisman completed the CD programs agreed upon with the community (beyond all moral or legal requirements).

Environmental Protection

Again, it should be noted that the environmental regulatory system in Colombia is extremely impressive. As Nexen indicated,

"The level of involvement and management by the Ministry of Environment is very high. If you want to sneeze in the jungle in Colombia, you had better submit an Environmental Impact Assessment."

Although this may require much more effort in the planning and development phase, it was suggested that problems in the field are very rare due to the level of awareness of the local conditions, and preparedness, that result from adhering to such strict guidelines. Unfortunately, the same could not necessarily be said of Ecuador. Although regulations were in place, lack of consistent political stability in the last few years has not allowed the environmental control measures to become as advanced as in Colombia.

Weakness: EnCana's pipeline consortium, OCP, was widely criticized for numerous incidents of environmental concern, including the consistent criticism over the location of the pipeline in the Mindo area (see photo). The issue here, although incompletely assured due to lack of access to OCP, appears to be more along the lines of insufficient consultation and engagement with concerned citizens/groups, than actual environmental damage. Parties have vastly different views on the "appropriate route" for the OCP pipeline, and it appears as if OCP has not provided sufficient risk management data to vociferous NGOs and activist groups. Community monitors have been refused access to the pipeline (with the exception of what appears to be a court-imposed Mindo study), unlike the case of Talisman and Nexen in Colombia. It is extremely important to note, that the Ministry of Environment had only one formal infraction on record, but Ministry stated that,

"This was more of an administrative error than anything else. OCP needed to remove some trees to provide structural support to their cableway, but did not have prior permission to cut down any trees. The pipeline was shut down, but only until OCP could provide the necessary impact and remediation documentation."

Moreover, the Ministry praised OCP for the hand digging of a section of pipeline in a highly sensitive area. They stated,

"This demonstrates OCP's commitment to minimizing its environmental impact, even at significant extra cost."

TABLE 2: ICE PRINCIPLE 2 – COMMUNITY PARTICIPATION

| | Talisman | Nexen | Enbridge | EnCana / OCP | EnCana / AEC* |
|---|--------------|--------------|--------------|--------------|---------------|
| 2.1 We will strive to ensure our activities are consistent with sound environmental management and conservation practices | 3.5 - | 3.5 - | 3.5 - | 2.5+ | 3.5 - |
| 2.1.i <i>Are formal corporate policies and procedures in place to ensure that environmental impacts are minimized from planning through to decommissioning of activities?</i> | 3.5 | 4.0 | 3.5 | 2.5 | 3.0 |
| 2.1.ii <i>Are adequate environmental impact assessments being conducted in a timely and effective manner?</i> | 3.5 | 3.5 | 3.5 | 1.5 | 3.0 |
| 2.1.iii <i>Have key environmental stakeholders been actively engaged in a fair and meaningful manner?</i> | 3.0 | 3.0 | 3.5 | 1.5 | 3.0 |
| 2.1.iv <i>Do stakeholder concerns receive fair and meaningful consideration within the organization, including the affecting of change to activities?</i> | 3.5 | 3.0 | 3.0 | 1.5 | 3.0 |
| 2.1.v <i>Is local and international legislation being considered to afford maximal protection of local ecosystems?</i> | 3.5 | 3.5 | 3.5 | 3.0 | 3.0 |
| 2.1.vi <i>Are appropriate Environmental Management Systems being implemented, managed and monitored to effect maximal environmental protection?</i> | 3.5 | 3.5 | 3.5 | 3.0 | 3.0 |
| 2.1.vii <i>Are problems (accidents/incidents/near misses) being managed in a manner consistent with decreasing repeat events?</i> | 3.5 | 3.5 | 3.5 | 3.5 | 3.0 |

Strength:

As mentioned above, EnCana's AEC-Ecuador operations received an award from the Ministry of Environment for its community participation and environmental protection. This was partly due to their involvement with the hand-digging exercise in the Mindo area, plus the development of a cable system to lift sections of pipe into place (rather than using heavy machinery), but was also due to AEC's consultation process during its Lago Agrio redevelopment project. AEC needed to build an 11km pipeline link to the Amazonia Pumping Station from the Lago Agrio Tank Farm. AEC discussed 7 potential routes with the affected communities, and opted for the adoption of a 'New to Ecuador' multiple use Right-of-Way. Three different pipelines were all built on one Right-of-Way to reduce the environmental footprint in the area (among other reasons).

Human Rights

As one might expect from companies daring to participate in the economic development of countries like Colombia and Ecuador, the attention paid to the respecting of Human Rights is high on the business practices agenda. Realistically determining the extent to which Human Rights is considered a "moral absolute" within a company, or, as many have argued, a public statement of "what people want to hear", is near impossible in most cases. However, it was quite clear that in all but EnCana's OCP consortium, the respecting of Human Rights was at the core of their "applied values". As Jean Yves Perrault, Nexen's Security Director in Colombia, stated,

"Respect for Human Rights is written into everything we do. We expect all soldiers assigned to protect our assets to attend a 3-day training course, and Human Rights and corruption clauses are written into all of our contracts."

Weakness:

Bearing in mind the fact that Corporate Knights was unable to meet with OCP to gain clarity on their stand on Human Rights, it would be unprofessional to suggest that claims of complicity in abuses in Ecuador are justified. Nonetheless, it should be reported that many interviewed groups in Mindo, the Cuyabano district, and along the pipeline, reported incidents of alleged Human Rights abuse. Everything from the excessive use of force in dispersing protestors blocking trucks from the pipeline access road in Mindo, to the use of force in coercing land owners to accept the pipeline's right-of-way passing through their property. To be fair to EnCana, and given that the timing and scope of this

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exercise did not permit a comprehensive investigation into these allegations, it cannot be suggested that EnCana, or OCP for that matter, was in any way complicit in these alleged incidents.

That having been said, EnCana was unable to demonstrate how incidents of Human Rights abuse were addressed within their Ecuadorian operations. Although one cannot expect a company to attend to all cases of alleged Human Rights abuse, at bare minimum EnCana should be able to demonstrate a commitment to addressing concerns within their sphere of influence. Just as Talisman has been doing for the past few years in Sudan, EnCana should be putting itself on the official record as opposing all incidents of alleged Human Rights Abuse in and around its area of operations. Until this occurs, it would be difficult to confirm that EnCana's stated Human Rights commitments are truly "applied".

TABLE 3: ICE PRINCIPLE 3 – HUMAN RIGHTS

| | Talisman | Nexen | Enbridge | EnCana / OCP | EnCana / AEC* |
|--|----------|-------|----------|--------------|---------------|
| 3.1 We will strive to ensure our activities are consistent with sound environmental management and conservation practices | 3.5 - | | | 2.0 - | 3.0 - |
| 3.1.i <i>Are formal corporate policies and procedures in place to support and promote the protection of human rights?</i> | 3.5 | 4.0 | 4.0 | 2.5 | 3.5 |
| 3.1.ii <i>Is the company actively promoting the protection of human rights within its sphere of influence?</i> | 3.0 | 3.0 | 3.5 | 1.5 | 2.5 |
| 3.2 We will strive to ensure our activities are consistent with sound environmental management and conservation practices | 3.5 - | 3.5 - | | 2.5+ | 3.0 - |
| 3.2.i <i>Have abuses of human rights (real and/or perceived) occurred within the company's sphere of influence?</i> | 3.0 | 3.0 | 3.5 | 1.5 | 3.0 |
| 3.2.ii <i>Can the company be deemed complicit in any human rights incidents?</i> | 3.5* | 3.5* | 3.5* | 2.0 | 2.5 |

*The absence of perfect scores (4.0) in no way indicates the presence of Human Rights abuses.

Strength:

Although all four companies made explicit mention of the respecting of Human Rights within their codes of ethics/conduct, Enbridge and its consortium OCENSA exceeded many expectations through the development and application of a specific Human Rights code. As Enbridge stated,

"OCENSA has a Human Rights policy that is not merely a statement, but a "policy with teeth" that is expected to drive ethical behaviour for employees and contractors alike."

Within the Colombian context, it was widely reported that a country-specific Human Rights policy is a moral imperative given the country's long-standing conflict with guerilla and paramilitary groups, the frequency with which labour union leaders disappear, and the potential for abuses to occur outside the public's view, in the middle of the jungles, where the oil exploration and development activities occur.

The "teeth", at least at Enbridge, have even been demonstrated by letters of protest written to the Government of Colombia on behalf of an affected individual whose physical security had been threatened within OCENSA's sphere of influence. In many countries, letter such as these would be lost in an administrative shirking of responsibility, but the Office of the Vice President in Colombia has established a Human Rights monitoring and advocacy function.

As Michael Harvey of the Canadian Embassy indicated,

"You can learn tricks from good companies. This is the first time I've seen a Human Rights Policy in a company."

Perhaps Mr. Harvey is correct. Perhaps this is one of those "tricks" that other companies can learn from Enbridge and its partners in Colombia.

Business Practices

"Colombia has been fairly effective and well positioned to fight corruption. Unfortunately, Colombia has a bad reputation...mostly because of the drug trade and the guerilla groups. The perception of Colombia has nothing to do with our reality."

Transparency International indicated that Colombia had an unfair reputation as a corrupt country, and one in which business occurred in the presence of high levels of fraud and corruption. The reality of Colombia is somewhat of a polar opposite. It was made abundantly clear that bribery, corruption and unethical business conduct is deemed absolutely unacceptable. As Transparency International stated,

"If you are in the middle of a conflict area the decisions become more difficult, although there are plenty of examples of companies that refuse to pay bribes or facilitation payments."

TABLE 4: ICE PRINCIPLE 4 – BUSINESS CONDUCT

| | Talisman | Nexen | Enbridge | EnCana / OCP | EnCana / AEC* |
|--|----------|-------|----------|--------------|---------------|
| 4.1 We will not make illegal and improper payments and bribes and will refrain from participating in any corrupt business practices | 3.5 - | 3.5 - | 3.0+ | 2.5 | 3.0+ |
| <i>4.1.i Are formal corporate policies and procedures in place to eliminate corrupt business practices?</i> | 3.5 | 4.0 | 3.0 | 3.0 | 3.0 |
| <i>4.1.ii Is the company actively monitoring business activities to avoid corruption?</i> | 3.5 | 3.0 | 3.0 | 1.5 | 3.0 |
| <i>4.1.iii Can the company be deemed complicit in any incident of corruption?</i> | 3.5* | 3.5* | 3.5* | 1.5 | 3.0* |
| 4.2 We will not make illegal and improper payments and bribes and will refrain from participating in any corrupt business practices | 3.5 - | 3.5 - | | 2.0+ | 3.0+ |
| <i>4.2.i Can the company be deemed guilty of any legal non-compliance?</i> | 3.5* | 3.5* | 3.5* | 3.5* | 3.5* |
| <i>4.2.ii Is the company conducting their business in a transparent and accountable manner?</i> | 3.5 | 3.5 | 3.0 | 2.0 | 3.0 |
| 4.3 We will ensure contractors', suppliers' and agents' activities are consistent with these principles | 3.5 - | | 3.5 - | 2.0 - | 3.0+ |
| <i>4.3.i Are formal corporate policies and procedures in place to ensure contractor, supplier and agent compliance?</i> | 3.5 | 4.0 | 3.5 | 2.5 | 3.5 |
| <i>4.3.ii Is the company actively monitoring the business activities of its contractors, suppliers and agents?</i> | 3.0 | 3.5 | 3.5 | 1.5 | 3.5 |
| <i>4.3.iii Are effective ethical due diligence reviews conducted prior to entering into business relations?</i> | 3.5 | 3.5 | 3.0 | 2.0 | 3.0 |
| <i>4.3.iv Have non-complying contractors, suppliers and agents been identified and contracts cancelled?</i> | 3.5 | 3.5 | 3.0 | 1.5 | 3.0 |

*The absence of perfect scores (4.0) in no way indicates the presence of Human Rights abuses.

- Weakness:** As in the case of the application of Human Rights policies and procedures, EnCana was insufficiently able to demonstrate how allegations that OCP has engaged in improper business conduct were managed within the partnership. Again, this is not to suggest that EnCana, or OCP, in any way actively promotes unethical behaviour, but it does leave sufficient room for others to at least argue that EnCana passively accepts that it may occur within its sphere of influence. Although unreasonable to suggest that EnCana should debate each incident or allegation, the company should be able to adamantly defend its assertion and commitment to operating in the unequivocal absence of unethical behaviour. Enbridge, Nexen and Talisman were all able to defend their policies and procedures, EnCana...and perhaps due to our unmatd criticism of OCP...was unable to adequately follow suit.
- Strength:** Of the companies reviewed, Nexen sufficiently demonstrated numerous areas in which it would have been classified as "Best-in-Class" or "Best Practice", and nowhere was this more evident than with respect to their contractor agreements. An entire discourse could be written about Nexen's contractor due diligence, including the application of their SESR (Safety, Environment and Social Responsibility) policies and procedures, including the absence of bribery and/or facilitation payments. Potential contractors can be, and have been, de-selected for their inability to demonstrate the capacity to adhere to the same SESR standards as Nexen does, and where gaps exist contractors work in concert with Nexen's staff to develop a "Bridging Contract". This document identifies which policies (theirs or Nexen's) are the most stringent, and explicitly defines the terms under which the parties are to operate to meet the highest degree of SESR compliance.

Employee Rights, Health & Safety

Perhaps the working conditions, maturity of the oil industry, and/or overall experience of each company in managing employees in areas of significant risk of injury was sufficient enough reason to expect that all four companies would rate fairly highly in this area, but it was not expected that all four companies would be operating in the near absence of criticism. Each company was able to demonstrate the degree to which worker health and safety was an applied priority, and both Nexen and EnCana (AEC-Ecuador) were able to follow up with verified assertions of zero lost time incidents (LTIs) over extended periods (2 years for AEC).

- Weakness:** In Colombia, where there have been thousands of union leader deaths...the most of any country in Latin America...it is understandable that all companies would be working hard to eliminate the need for unions within their operations. Although it was impossible to field test the companies' assertions that employee relations were "excellent" and therefore did not warrant unionization, it would have been much more effective if each company could have provided clear evidence of their commitment to promoting "Freedom of Association" (an ILO Core Convention) within their operations, including contractor agreements.
- Strength:** Both Nexen and EnCana (AEC-Ecuador) were able to demonstrate how worker health and safety is monitored on a "per shift" basis. Nexen uses what are termed "Stop Cards" (H&S checklists), while AEC employs a "Severity Matrix" system to report and manage identified incidents or issues of non-compliance to corporate policies and procedures. Each company clearly demonstrated its commitment to ensuring the health and safety of their workers, and it was of little surprise that both companies could report extended Zero LTI periods. A representative in Nexen's Calgary head office even confirmed that their operations were risky, and that they actively track all accidents, incident and near misses. While their Canadian operations cannot report the same LTI record as Colombia, the global office can certainly confirm that the Colombian record is accurate...impressive...unbelievable...but accurate.

TABLE 5: ICE PRINCIPLE 5 – EMPLOYEE RIGHTS, HEALTH & SAFETY

| | Talisman | Nexen | Enbridge | EnCana / OCP | EnCana / AEC* |
|---|--------------|--------------|--------------|--------------|---------------|
| 5.1 We will ensure health and safety of workers is protected | 3.5 - | 3.5 - | 3.5 - | 3.5 - | 3.5 - |
| <i>5.1.i Are formal corporate policies and procedures in place to ensure that the health and safety of workers is protected?</i> | 3.5 | 3.5 | 3.5 | 3.5 | 3.5 |
| <i>5.1.ii Is the company actively monitoring workplace health and safety?</i> | 3.5 | 3.5 | 3.0 | 3.5 | 3.5 |
| <i>5.1.iii Are adequate health and safety risk assessments being conducted in a timely and effective manner?</i> | 3.0 | 3.5 | 3.0 | 3.5 | 3.5 |
| <i>5.1.iv Is local and international legislation being considered to afford maximal worker health and safety?</i> | 3.5 | 3.0 | 3.0 | 1.5 | 3.0 |
| <i>5.1.v Are appropriate Health and Safety Management Systems being implemented, managed and monitored to effect maximal worker protection?</i> | 3.5 | 3.5 | 3.0 | 3.5 | 3.5 |
| <i>5.1.vi Are problems (accidents/incidents/near misses) being managed to decrease repeat events?</i> | 3.5 | 3.5 | 3.0 | 3.0 | 3.0 |
| 5.2 We will strive for social justice and promote freedom of association and expression in the workplace | 3.5 - | 3.5 - | 3.5 - | 3.5 - | 3.5 - |
| <i>5.2.i Are formal corporate policies and procedures in place to promote freedom of association and expression in the workplace?</i> | 3.5 | 3.5 | 3.5 | 3.0 | 3.0 |
| <i>5.2.ii Is the company actively promoting freedom of association and expression?</i> | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 |
| 5.3 We will ensure consistency with universally accepted labour standards, including those related to exploitation of child labour | 3.5 - | 3.5 - | 3.5 - | 3.5 - | 3.5 - |
| <i>5.3.i Are formal corporate policies and procedures consistent with international norms?</i> | 3.5 | 3.5 | 3.5 | 3.5 | 3.5 |

5. CONCLUSIONS

Although the Corporate Responsibility team at the Department of Foreign Affairs and International Trade in Ottawa has indicated a move away from the International Code of Ethics for Canadian Business, and towards the application of the OECD Guidelines for Multinationals, the ICECB is clearly an effective tool for measuring Corporate Responsibility outside our national boundaries. It is a "National Response" to an international concern, and it is an excellent barometer...if applied consistently...of determining whether Canadian companies are protecting our national image abroad.

Dick Wilson, EnCana's Director of Corporate Communication asked perhaps the most pertinent question of all during our wrap-up interview in Calgary. He asked,

"Now that you've been to Colombia and Ecuador and have seen what each of the four companies is doing in South America, are you proud to be Canadian?"

In short, the answer would have to be, "Absolutely!"

Although none of the companies are operating in the absence of "Room for Improvement", there is an undeniable commitment to operating as Good Corporate Citizens, and consistent with the expectations they would be trying to adhere to within Canada, as they operate in foreign territory. Stakeholders in both Colombia and Ecuador, in light of our national presence in those countries, complimented our Canadian companies for "being different" and, for lack of a better term

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“being better” than companies from other countries. Our flag, our Maple Leaf, our national identity is, for the most part, being upheld by the investments and commitments being made by Talisman, Nexen, EnCana and Enbridge.

Was there a clear leader?

Although all companies, assuming one consider EnCana’s AEC-Ecuador operations in the absence of their OCP involvement, were doing an excellent job at living up to the expectations outlined within the International Code of Ethics for Canadian Business, it would be unfair of Corporate Knights not to explicitly commend Nexen for its unparalleled commitment to “being”...not “being seen as”...a Good Corporate Citizen through its operations in each country in which it operates.

Nota Beni: It is extremely important to note that EnCana’s scores, relative to their involvement with OCP could, potentially, have been much higher had OCP provided a level of cooperation consistent with all other parties. Unfortunately, much of the evidence gathered in Ecuador went unchallenged, or uncorrected by OCP.

APPENDIX I: International Code of Ethics for Canadian BusinessSource: www.cdp-hrc.uottawa.ca/globalization/busetics/codeint.html

Interdisciplinary Studies in Law: Globalization, Justice and Law

Business Ethics and Corporate Stakeholder Relations The International Code of Ethics for Canadian Business

VISION

Canadian business has a global presence that is recognized by all stakeholders as economically rewarding to all parties, acknowledged as being ethically, socially and environmentally responsible, welcomed by the communities in which we operate, and that facilitates economic, human resource and community development within a stable operating environment.

BELIEFS

We believe that:

- we can make a difference within our sphere of Influence (our stakeholders)
- business should take a leadership role through establishment of ethical business principles
- national governments have the prerogative to conduct their own government and legal affairs in accordance with their sovereign rights all governments should comply with international treaties and other agreements that they have committed to, including the areas of human rights and social justice
- while reflecting cultural diversity and differences, we should do business throughout the world consistent with the way we do business in Canada
- the business sector should show ethical leadership
- we can facilitate the achievement of wealth generation and a fair sharing of economic benefits
- our principles will assist in improving relations between the Canadian and host governments
- open, honest and transparent relationships are critical to our success
- local communities need to be involved in decision-making for issues that effect them
- multi stakeholder processes need to be initiated to seek effective solutions
- confrontation should be tempered by diplomacy
- wealth maximization for all stakeholders will be enhanced by resolution of outstanding human rights and social justice issues
- doing business with other countries is good for Canada and vice versa

VALUES

We value:

- Human rights and social justice
- Wealth maximization for all stakeholders
- Operation of a free market economy
- A business environment which mitigates against bribery and corruption
- Public accountability by governments
- Equality of opportunity
- A defined code of ethics and business practice
- Protection of environmental quality and sound environmental stewardship
- Community benefits
- Good relationships with all stakeholders
- Stability and continuous improvement within our operating environment

PRINCIPLES

A. Concerning Community Participation and Environmental Protection, we will:

- strive within our sphere of influence to ensure a fair share of benefits to stakeholders impacted by our activities
- ensure meaningful and transparent consultation with all stakeholders and attempt to integrate our corporate activities with local communities as good corporate citizens
- ensure our activities are consistent with sound environmental management and conservation practices
- provide meaningful opportunities for technology, training and capacity building within the host nation

B. Concerning Human Rights, we will:

- support and promote the protection of international human rights within our sphere influence
- not be complicit in human rights abuses

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- not make illegal and improper payments and bribes and will refrain from participating in any corrupt business practices
- comply with all application laws and conduct business activities in a transparent fashion
- ensure contractor's, supplier's and agent's activities are consistent with these principles

D. Concerning Employees Rights and Health & Safety, we will:

- ensure health and safety of workers is protected
- strive for social justice and promote freedom of association and expression in the workplace
- ensure consistency with universally accepted labour standards, including those related to exploitation of child labour

APPLICATION

The signators of this document are committed to implementation with their individual firms through the development of operational codes and practices that are consistent with the vision, beliefs, values and principles contained herein.

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E-mail: emendes@uottawa.ca

APPENDIX II: Contact List for Stakeholder Interviews in Colombia

INTERVIEWEES - Colombia

| GROUP | ORGANISATION | NAME | PHONE # | WHO | DATE / TIME | INFORMATION |
|----------------|-------------------------|----------------------|-----------------|-------|--------------|--|
| Government | Min. del Medio Ambiente | Guillermo Acevedo | 571 332 3400 | | Weds 1pm | Calle 37 # 8 40 |
| | Ombudsman for Hum Rts | Eduardo Cifuentes | 571 562 9300 | | Fri 9am | Secretariat_privada@hotmail.com |
| Foreign Gov't: | Canadian Consulate | Jean Marc Duval | 593 2 2232 114 | MR/TH | Mon 2pm | Carr 7 #115-33 Piso 14 |
| | | Michael Harvey | 593 2 2232 114 | MR/TH | Mon 2pm | |
| NGOs: | Censatagua Viva | Tatiana Roa | 571 244 2465 | | Tues 3pm | Dg. 24 No. 27 A |
| | (Oil Watch) | | 571 244 0581 | | | |
| | ONIC | Armando Valbuena | 571 281 1845 | | Mon 9am | |
| | | Alberto Achitohan | 571 284 6815 | | Mon 9am | |
| | | Clemencia Herrea | 571 284 2168 | | Mon 9am | |
| Academia | Business School Prof. | Fernando Cepeda | | | Thurs 11am | *Former Ambassador to Canada, US and UK |
| Talisman | Field Manager | Pedro Martínez | | MR | Thurs 10am | |
| | Quiwe Foundation Mgr. | Oscar Munoz | | MR | Thurs 9am | |
| | Dir. CSR | Reg Manhas | | TH | Thurs 10am | Conference Call |
| Nexen | General Manager | Tim England | | MR | Thurs 10am | Conference Call |
| | Security Director | Alan King | 571 317 6330 | TH | Thurs 3pm | Carrera 9, #76-49, Piso 6 |
| | SESER Team | Jean Yves Pinneault | 571 317 6330 | TH | Thurs 2pm | |
| Enbridge | Field Manager | Algemantas Didzulis | 571 321 0088 | MR | Thurs 3pm | |
| | OCENSA | Juanita de Francisco | 571 321 0088 | TH | Tues 9am | Calle 98, #9-03 Ofc 501, Sancho Bldg |
| Others | ECOPEPETROL | Roberto Giraldo | 310 258 3633 | | Tues 11am | Carrera 9, #76-49, Piso 6 Nogal Center, Bogota |
| | Seisimopetrol | Néstor Morales, GM | 310 865 5272 | | Weds 3pm | Carrera 13 # 36 24, Piso 2 |
| | NY Times | Monika | 310 280 3899 | | Weds 11am | Calle 100 # 8A 55 Torre C, ofc: 718 |
| | Associated Press | Andrew Selsky | 03 310 223 5147 | | Tues 12:30pm | |
| | | | | | Tues 2pm | |

| GROUP | ORGANISATION | NAME | PHONE # | WHO | DATE / TIME | INFORMATION |
|-------|----------------------------|---------------------|---------------|-----|-------------|--|
| | El Tiempo | Wendy Arenas | 571 291 0135 | | Mon 11am | Wendy covers SD beat |
| | Col-Can Ch. Of Comm. | Karen Humenas | 571 294 0100 | | Mon 11am | Phone interview from TO |
| | WBCSD-Colombia | Wally Swain | 571 657 9800 | | Tues 6pm | Carr. 12 #93-31 Ofc 405, Bogota |
| | Col Centre for Corp. Resp. | Maria Emilia Correa | 622 1224/1303 | | Tues 12pm | Carr 28 #95-08 piso 2 |
| | USO - Oil workers union | Jose Rafael Mateus | 602 0455/6/7 | | Thurs 8am | usocol@csi.com |
| | Transparency International | Rodrigo Gutierrez | 622 6562 | | Wed 1:30 | Calle 92 #16-30 piso 5 |

CAR Sumpapaz: Finca Alicante Alto Vereda Mosquera antiguo camino empedrado Alcuja - entrada Coovipros
Calle 15A # 12 A 50 Barrio Fontanar - Fusagasugá - 2 hours out of Bogota (For Atadero -1 & Seismic)

Cortolino: Carrera 5 Avenida del Ferrocarril Calle 44 Ibaqué - Tolima - 4-5 hours out of Bogota

Seismopetrol: Alternate number = 621 39 76 / 65

Ecopetrol: Alternate number = 571 234 5697

Omb for Hum Rts Calle 55N #10-32 Bogota

OTHER STAKEHOLDERS CONTACTED IN THE US AND CANADA

- Scott Pearce, Colombia Solidarity Network
- Kai Alderson, VP Social Policy, Real Assets
- Ian Bragg, Oil and Gas Analyst, MJRA
- Nadja Drost, Int. Coordinator, Toronto Environmental Alliance
- Moody's Credit Rating
- Standard and Poors
- Keven Koenig, Amazon Watch
- Georgette Gagnon, Audrey Macklin and Penelope Smith (Authors of *Deconstructing Engagement*)
- Alex Neve, Sec. Gen Amnesty International Canada