

Codes of conduct at Canadian multinational enterprises (MNEs): at the confines of private regulation and public policy on labour

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Contrary to commonly held ideas, globalization is not a given, a phenomenon located outside social interactions; rather, it is a process that is constructed socially by actors and institutions (Giles, 2000). Among the actors that construct globalization are transnational firms, the increasing importance of which is inseparable from the wave of economic liberalization that rolled in with the 1980s and is evident in Canada as increased foreign investment by Canadian firms and by the insertion of these firms into international networks through various types of agreements, such as strategic alliances or a reliance on international subcontracting networks. What are the working conditions for wage employees who work for these companies in host countries, in particular in developing countries? What rules and practices exist regarding these workers, and how can Canadian law and public policy contribute to their protection? These are the descriptive and normative objectives of the research project entitled *Citizenship, governance relationships, and globalization: a study of the implementation of codes of conduct at Canadian multinational enterprises (MNEs)*, which was begun in 2001 with support from the Relationships in Transition Program, a joint initiative of the Social Sciences and Humanities Research Council of Canada and the Law Commission of Canada¹.

This document is both an activity report and a preliminary research report. In effect, our project was designed to explore responses to the general questions raised above, using an empirical approach centred on a specific object: corporate codes of conduct in Canadian multinational enterprises.

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Research focussed on collecting data that were likely to offer empirical responses to the questions raised. These empirical research activities are described in this document, as are the preliminary conclusions that can be drawn from our work as it currently stands.

I. Object of Study: Corporate Codes of Conduct at Canadian Multinational Enterprises

Working conditions and the basic rights of wage employees at multinational enterprises are increasingly present in *codes of conduct*, which can be defined as a set of principles with which a company agrees to voluntarily comply in conducting its activities (Forcese, 1997, p.15). These codes can relate to commercial practices, corporate ethics, environmental standards, working conditions and human rights, and may apply to multinational subsidiaries and subcontractors (Forcese, 1997; ILO, 1998, par. 29 and 30). Numerous Canadian companies subscribe to such codes.

Presented as sources of private regulation, these codes of conduct have increasingly become a concern of public policy. Certain actors feel that the government should promote the inclusion of internationally accepted standards into codes of conduct voluntarily set by companies. Yet the pertinence of this type of incentive-based policy is linked to how effective codes of conduct are, in actual practice, as instruments for protecting and promoting basic rights and working conditions. The working hypothesis derived from our multidisciplinary approach, which is founded on the concept of regulation, is that *the effectiveness of codes of conduct depends on the interests, strategies, interactions and power dynamics among the local, national, and international actors who are affected by their design and implementation* (Murray, Lévesque and Vallée, 2000). Seen from a legal angle, this hypothesis means that the self-regulatory practices of multinational enterprises occur within a pluralistic environment of legal, state, and non-state factors, and that the relationships among these factors influence the direction of the codes of conduct (Belley, 1993 and 1996; Mockle, 1992). Thus, knowledge of the conditions of effectiveness is an indispensable prerequisite to any normative analysis of the space for private initiatives to construct international labour standards, such as codes of conduct, within a new environment for governance.

Two distinct but complementary research axes arise from this general research hypothesis. The first attempts to *characterize Canadian public standards and policies with regard to corporate codes of conduct at multinational enterprises*. These public standards and policies do not have a determining effect on the development of codes of conduct. Nonetheless, they can be a resource for actors who wish to promote the formulation of such

codes. Actors can mobilize these standards and policies, adding them to other available resources in reaching their objectives. The second research axis seeks to define the *social process around the emergence and implementation of corporate codes of conduct at Canadian multinational enterprises*, a process through which public standards and private standards become articulated. Our preliminary results are presented around these two axes.

II. Empirical Research Strategies

These strategies are presented briefly in this report, in order of their state of progress. Involved are exploratory interviews, a longitudinal case study (a campaign involving the implementation of a code of conduct for retail department stores in Canada), the development of files on Canadian companies, research on the implementation of Canada's international commitments with regard to multinational enterprises, an analysis of the implementation of codes of conduct in the raw materials, mining and petroleum products sectors, in Gabon, and a comparative sketch of the emerging political and legal context of codes of conduct in Canada and the United States.

III. Preliminary Results

Given that the various empirical research strategies begun in this project are not yet completed, the results described in this report must be considered preliminary. They are provided here with a view to feeding discussion and debate on what results might be expected to derive from the two major research axes we have identified.

A. *Directions in Canadian public policy on codes of conduct at multinational enterprises*

The aim of our first research axis is to delineate the characteristics of the public standards and policies on codes of conduct in Canada, with reference to two specific studies: the first examines the implementation in Canada of the *OECD* (Organization for Economic Co-operation and Development) *Guidelines for Multinational Enterprises* and the second examines *Export Development Canada*, formerly the Export Development Corporation (EDC), a Crown Corporation that offers financing and insurance services to Canadian exporters and investors.

1. The *OECD Guidelines for Multinational Enterprises* were adopted in 1976. These recommendations cover various activities at multinational enterprises, such as employment and labour relations, the environment, the publication of information, competition, financing, and taxation, as well as

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science and technology. The *Guidelines* were reviewed in 2000. Beyond the fact that they now cover a broader range of activities by multinational enterprises, the key element in the revised version is found in the new mechanisms for implementation of its recommendations. States, through their national contacts, are to promote the *Guidelines* in multinational enterprises, manage enquiries made in connection with the *Guidelines*, and help the different parties involved to resolve existing problems. Canada's National Contact Point has intervened on two occasions regarding the application of the *Guidelines* in Canadian companies. The existence of this procedure for handling grievances within the NCP is new, and will need to be observed over time.

2. *Export Development Canada (EDC)*, which until 2001 was known as the *Export Development Corporation (EDC)*, is a Crown Corporation established by the *Export Development Act*, and offers financing services to Canadian exporters and investors. Companies that request support from EDC are under no obligation to meet specific requirements with regard to the impact of a given project on human rights, even if a certain analysis of social impacts is conducted during the overall risk assessment of a project. No measures exist to incite companies to adopt a code of conduct. Given that the *Act* was recently amended and these options have been under discussion, the present situation might be taken as a good indicator of the direction of public policies currently in effect in Canada with regard to codes of conduct.

Study of the two cases and the links that seem to exist between them suggests that Canadian standards and policies regarding codes of conduct are characterized by a non-restrictive approach based on information, dialogue, and compromise-seeking.

B. Codes of conduct at the heart of social interactions

In the documentation consulted, codes of conduct are often presented as the fruit of unilateral commitments by multinational enterprises. Nonetheless, in terms of this second research axis, we postulate that collective actors exist behind these codes, whether they influence the design, content, or monitoring, or whether they use the codes as strategic leverage to attain specific objectives, through a range of resources: by taking action on public policy, the corporate image, a company's product, or its financing.

In the study of the social interactions that surround codes of conduct, the classic approach of collective labour relations in North America immediately calls to mind two major actors: the employer and the union. The various faces of public power represent a third actor who is involved as an external arbitrator in an otherwise bilateral process. Yet increasingly, this system paradigm, which is more or less closed, fails to reflect a dynamic reality, especially in the case of

multinational enterprises. Several factors require that we broaden this perspective and consider other actors.

1. Actors and appreciation of codes of conduct. Beyond the classic dyad of collective labour relations, the emergence of codes of conduct generates a multiplicity of categories of private collective actors: labour-sponsored investment funds, organizations whose mission is to promote ethical investment and commercial intermediaries that offer ethics-oriented financial advice, religious groups, and specialized pressure groups whose purpose is to promote either international solidarity or ethical exchanges with the officials who are called upon to implement voluntary public policies and to ensure conciliation of the various interests at play. Four factors seem to explain the relative interest of these actors with regard to codes of conduct as a regulatory mechanism: the proximity of codes to their central mission; their ideological orientation; the existence of alternative and/or complementary mechanisms; the strategic reading of the possibilities offered by the codes.

2. Interaction between the actors, and effectiveness of the codes. Based on preliminary analysis of the information collected in this study, the effectiveness of the codes depends on several factors: the resources that the collective actors can mobilize; their capacity to create effective coalitions; the existence of complementary pressure points; internal corporate discussions, and reading the strategic opportunity seized by management.

3. Autonomous regulation vs. state regulation. Codes of conduct are part of a whole that also includes state regulation, international standards, and other public and private norms. A final step in clearing the empirical pathway concerns the perception held by actors of the articulation between autonomous regulation and public regulation of multinational enterprises in a global economy. For collective actors - with the exception, it seems, of the perspective of the company and its representatives - the capacity to exert more effective pressure on corporate behaviour *depends* on the interface between state and private regulations. A certain confirmation of our initial hypothesis regarding the importance of internormativity in the new governance relationships can be seen to emerge from our discussions.

IV. Codes of Conduct, Part of an Emerging Global Citizenship?

By way of synthesis, it will be useful here to take up the preliminary results of our study as a whole, in order to relate them to the idea of citizenship (c), in terms of an emerging “global civil society”. We find it best to begin by explaining the idea of an interaction between a plurality of legal orders at the

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basis of the emergence of codes of conduct (a), to then arrive at the conflicts of rationality which are at issue with respect to codes of conduct (b).

a) The main contribution of our research is to show that the codes of conduct at multinational enterprises cannot be considered as resulting only from self-regulatory practices; rather, they are the product of plural interactions between state and non-state legal orders. We can stylize the relations between these various legal orders by appealing to the category of “contract” as it is used in the sociology of law (Belley, 1998). Indeed, the codes of conduct at multinational enterprises have such a contractual scope, in that they aim, at least officially, to impose standards of conduct, not only on the various decision-makers of a firm, but also on the subcontractors on which the multinational enterprise depends to achieve its aims; moreover, the codes represent a series of commitments undertaken by the firm toward a variety of players outside the multinational enterprise. For example, the *standardized* contract appropriately designates the proclaimed effect of codes of conduct at multinational enterprises not only on peripheral units, but also on the multiple networks of economic agents who gravitate in the orbit of large multinational enterprises.

b) Internal and external pressures aimed at the implementation and revision of codes of conduct are supported by highly diverse rationales, which can be described as two paradoxical forms of rationality, inspired by Max Weber: instrumental rationality and axiologic rationality (Coutu, 1995). *Instrumental* rationality largely conditions the direction of action by state and economic actors, but also – albeit in an entirely different perspective – for their part, union actors and NGOs that are interested in the question of codes of conduct. By contrast, an *axiologic* rationality favours conditioning the positioning of certain actors with respect to the codes at multinational enterprises. In the Canadian context this involves, above all, a certain number of actors in “civil society”. For example, it is evident that religious groups that turn the question of codes of conduct into the motive behind their action let themselves be guided by the idea of a certain moral mission, which remains founded, as we have mentioned, on the willingness to engage with capitalism in a constructive manner. Concerns of an ethical nature (solidarity, corporate social responsibility, respect for the environment, and workers’ rights) also remain the driving force behind specialized pressure groups and ethical investment funds. This type of behaviour is inseparable from the representation of a “global civil society”, which underlies the construction of a global citizenship, detached from a state-based regulatory space.

c) How can citizenship be understood within the context of globalization? First and foremost, it is indeed odd to state the question in these terms, since the evolution of citizenship has been understood as within a purely state-based, national context (Marshall, 1963). That said, a certain number of recent studies

make a break from the classic framework for analysis of citizenship as delimited by the borders of a nation-state. This departure, which is stimulating for our purposes, appears especially in analyses that hold to an idea of a global civil society. This notion rests on the representation – though quite vague at best – of an emerging public space, an *alter*globalization, where pressure groups, NGOs, international coordinators of social movements, politicians, unions, international forums and communications networks relying on the *Net* also become actors in globalization. This representation of a “global civil society” enables the actors who draw upon it to claim rights of participation that arise from the notion of citizenship and that aim more broadly to oblige actors in economic globalization (states and multinational enterprises) to guarantee basic rights to the people who are subject to its effects.