

**CORPORATE SOCIAL ACCOUNTABILITY:
EXAMINING THE IMPACTS OF ETHICAL PURCHASING
POLICIES ON CANADIAN PUBLIC INSTITUTIONS**

by

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ABSTRACT

Insufficient responsibility by corporations, where the social and environmental consequences of their practices permits abuse in the workplace, is widespread. To prevent this, Canadian universities and municipalities are developing Ethical Purchasing Policies (EPPs), but considerable uncertainty exists about how to initiate effective EPPs with corporate compliance. This project utilized an Action Research methodology to learn what questions could best be answered by experts engaged in EPP implementation, and to analyse the results of their deliberations at a 3 day conference titled “*Ethical Purchasing, Human Rights and Public Policy Initiatives*”. Three categories were identified which helped to move EPPs forward – Standardization, Collaboration and Education. Two years later, key personnel from the 5 institutions with EPPs that attended the conference were interviewed regarding outcomes, implementation, compliance and accountability of corporations involved – and each contributed to favourable outcomes of EPPs, especially corporate social accountability.

KEYWORDS:

Ethical Purchasing Policies; Corporate Social Accountability / Responsibility; Action Research; Policy development, implementation, monitoring and compliance.

DEDICATION

To the people who work towards a sustainable world by creating an environmental, social and economic balance. And to those who continue to suffer the consequences of these imbalances.

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LIST OF ACRONYMS AND ABBREVIATIONS

AUCC: Association of Universities and Colleges of Canada - <http://www.aucc.ca>
Established in 1911, AUCC is the voice of Canada's universities representing 89 Canadian public and private not-for-profit universities and university-degree level colleges providing services in three main areas: public policy and advocacy, communications, research and information-sharing, scholarships and international programs. Our mandate is to facilitate the development of public policy on higher education and to encourage cooperation among universities and governments, industry, communities, and institutions in other countries.

CAUBO: Canadian Association of University Business Officers - <http://www.caubo.ca>
Founded in 1937, CAUBO is a non-profit professional umbrella organization representing the interest of administrative and financial officers in Canadian universities and affiliated colleges promoting and supporting professional management and effective leadership. It offers a wide array of programs and services, including an information repository that is a source of choice on administrative issues for members, partners and decision makers in higher education.

CFS: Canadian Federation of Students - <http://www.cfs-fcee.ca>
Formed in 1981, CFS provides students with an effective and united voice, provincially and nationally. More than 450,000 students from college and university students' unions across the country belong to the Federation.

FLA: Fair Labour Association - <http://www.fairlabor.org>
A partnership between corporations and collegiate licensees, human rights organizations (NGOs), colleges and universities. The board of the FLA is made up of 6 corporate members, 6 NGO members, 3 college/university members, 1 Chair. It is a system for internal and external monitoring, with a monitor certification program with public disclosure of facilities. Currently 175 affiliated colleges and universities and over 900 collegiate licensees are involved in the FLA program which is funded by dues, grants and other contributions.

MSN: Maquila Solidarity Network - <http://www.maquilasolidarity.org>
MSN is a labour and women's rights advocacy organization promoting solidarity with grassroots groups in Mexico, Central America, and Asia working to improve conditions in maquiladora factories and export processing zones holding retailers accountable for the conditions under which their products are made. Since 1995, MSN has supported garment workers' efforts to improve working conditions through policy advocacy, corporate engagement, participation in multi-stakeholder corporate accountability initiatives, & labour rights capacity building.

Verité - <http://www.verite.org>

An independent, non-profit social auditing and research organization established in 1995 to ensure that people worldwide work under safe, fair and legal working conditions. It maintains full independence and responsibility for its social audits, field operations, training and reporting activities while offering on-site and off-site confidential worker interviews, a core component of a Verité audit.

WRC: The Workers Rights Consortium - <http://www.workersrights.org>

A 15 member governing board – 5 representatives from university administrations, 5 members of United Students Against Sweatshops, 5 members from the WRC Advisory Council, responding to reports and complaints of apparel labour abuses created by college and university administrations, students and labor rights experts. WRC is effective at public reporting & disclosure mechanism and reports are available on-line. There are no corporate partners or involvement and are only funded by dues, grants and other contributions.

Global Reporting Initiative (GRI) - <http://www.globalreporting.org>

A multi-stakeholder process and independent institution whose mission is to develop and disseminate globally applicable *voluntary* Sustainability Reporting Guidelines for use by Organizations for reporting on the environmental, economic and social dimensions of their activities, products, and services. Started in 1997 and became independent in 2002, it is an official collaborating centre of the United Nations Environment Programme (UNEP) and works in cooperation with UN Secretary-General Kofi Annan's Global Compact. It has active participation of representatives from business, accountancy, investment, environmental, human rights, research & labour organizations from around the world.

AccountAbility 1000

Established in 1995, AA is the leading international non-profit institute that brings together members and partners from business, civil society and the public sector from across the world. Dedicated to promoting accountability for sustainable development by 1) The development of innovative and effective accountability tools and standards, most notably the AA1000 Series; 2) Undertaking cutting-edge research that explores best practice for practitioners and policy-makers in organisational accountability, thus promoting accountability competencies across the professions; 3) Securing an enabling environment in markets and public policies.

Social Accountability International (SAI)

Promotes human rights for workers around the world as a standards organization, ethical supply chain resource, & programs developer with an array of stakeholders. SAI promotes workers' rights primarily through their *voluntary* SA8000 system. Based on the International Labor Organization (ILO) standards and U.N. Human Rights Conventions, SA8000 is widely accepted as the most viable and comprehensive international ethical workplace management system available.

1 INTRODUCTION

As evidence of human and environmental rights violations in global manufacturing factories continues¹, universities and municipalities across Canada are adopting Ethical Purchasing Policies² (EPPs)³ and demonstrating leadership in business accountability. This is especially important since many of the corporate headquarters of the global factories are in Canada / North America.⁴

I am a member of a student organization called NoSweat SFU. This group is dedicated to advocating for the adoption and implementation of a university-wide ethical purchasing policy for products bought and sold at SFU. Together we organized the 1st phase of this project (September 2002–April 2003) to engage the SFU community and its administrators in a dialogue regarding Ethical Purchasing Policy adoption; the 2nd phase (October 2003–March 2004) was to convene a conference for as many diverse stakeholders as possible to help standardize EPP and to formulate compliance measures worth adoption by Canadian universities and municipalities. Two years after this conference, in phase 3 of the project, we sought to survey five EPP expert participants who had adopted EPPs and compliance measures to determine whether they helped to

¹ Louie 2002; Meintjes 2000; Jenkins, et al., 2001

² Ethical Procurement Policies (EPP) are based on United Nations (UN) and International Labour Organization (ILO) standards, focusing on factory (Sweatshop) and coffee (Fair Trade) production; specific criteria depends on the individual institutional policies.

³ Maquila Solidarity Network has documented that 10 Canadian Universities and 3 municipalities have adopted Ethical Purchasing or "No Sweat" policies between the late 1990s and early 2000s
www.maquilasolidarity.org/nosweat/index.htm

⁴ A 2004 documentary aired by the Canadian Broadcasting Corporation exposed sweatshops in both Toronto and Vancouver

hold business practices accountable to their policies while procuring products for Canadian university and municipal communities.

We were especially interested because these policies are based on International Labour Organization (ILO) conventions of which Canada is a signatory.⁵ As a parallel objective, a Website was organized to promote these tools in helping decision and policy makers choose EPP adoption and implementation strategies.

⁵ These include the Universal Declaration of Human Rights (UDHR), the UN ICESCR and a variety of ILO Conventions including the core conventions on rights at work (http://www.dfait-maeci.gc.ca/foreign_policy/human-rights/)

2 LITERATURE REVIEW AND BACKGROUND

By law, a corporation's first responsibility is to maximize profits for their shareholders outlined in the Corporate Charter which requires directors to act "in the best interests of the corporation"⁶. Economic profit therefore is the goal – also called the 'bottom line' – even when it comes at the expense of social or environmental well being where a corporation does business.⁷ Consequently, many academics, scientists and policy makers have noted that corporations have become increasingly dangerous for local communities and the planet's ecosystem when profit margins are pursued at the expense of local environmental, economic and social conditions.⁸ In response, many corporations now outline and market Corporate Social Responsibility (CSR) values and ethical guidelines in their business practices – only some choose independent verification.⁹

This review covers 8 sections. It begins by discussing *A Global and Social Economic Crisis* and why many academics, scientists and citizens strongly criticize corporate practices as aggravating an already existing global social and environmental crisis and suggests a *Move Towards a New Economy*. Next we turn to the *Corporate Social Responsibility* literature to investigate whether CSR can address the aforementioned global problems; the scope of the CSR movement will be assessed and evaluated as either an emergent business reality, or a simply a chimera in both the *CSR's Profitability* and *CSR's Accountability* sections. This is followed by a short discussion

⁶ Canadian Democracy and Corporate Accountability Commission 2002; Hinkley 2004

⁷ Hawken 2003, 1997; Balkan 2004; Hinkley 2004 p.5; Brecher et al 2002, p.4

⁸ Roseland 1998; Patterson 2000; Abbey 2004; Balkan 2004; Brecher et al 2002

⁹ For example WalMart, Hudson Bay company & Royal Bank. VanCity is independently verified.

on **Corporate Restructuring**: the possibility of changing the Corporate Charter to include provisions for social and environmental impacts. In **Corporate Social Accountability: Finding common ground values for action towards sustainable global solutions**, this review and analysis of the literature offers what can be done locally and nationally to address these corporate concerns in a positive and mutually respectful manner by finding common ground values for action towards corporate accountability and sustainable global solutions. Section 2 concludes with why standardized, accountable EPPs may provide a new solution in **Why an Ethical Purchasing Policy**.

2.1 A Global and Social Economic Crisis

While corporations have a powerful ability to contribute back to the communities in which they work, by law – the corporate charter – corporations are designed to produce profits. With profit as a corporation’s bottom line, a corporation’s profit can be at the expense of local social environments, where social conditions or needs of local people may not be met, unless they turn a direct profit. In keeping with maximizing profits or the bottom line, corporations have little incentive for social or environmental strategies.¹⁰ As the economy grows more global than local, the respect of local socio-political and environmental aspects of life is reduced as corporations are not required to take responsibility or accountability for actions outside of their shareholders’ demand for profit. Thus corporations are increasingly viewed as ‘dangerous’ by their critics.¹¹

*In 1886, the Supreme Court determined that corporations were entitled to the rights of citizenship under our Constitution. Since then, the corporation has developed into the worst kind of citizen: one that claims all the rights but shirks the responsibilities.*¹²

¹⁰ Haughton & Hunter 1994; Pike 2001a, 2001b

¹¹ Hawken 2003, p.50; Brecher et al. 2002, p.3,9; Abbey 2004, p.14, 133, Balkan 2004, p.19

¹² Hinkley 2004, p.5

Increasingly power that is normally in the hands of governments is being transferred to corporate bodies through deregulations and privatization,¹³ and through agreements such as the World Trade Organization, the North American Free Trade Agreement (NAFTA) or the pending Free Trade of the Americas (FTAA). As a result, corporations “now have the power to force national governments to defend corporate interests” above the voice of collective democracy.¹⁴

...globalization considerably reduced the power of nation states, particularly their power to serve the interests of their own people [and to]...regulate corporations. International organizations and agreements increasingly restricted environmental and social protections.¹⁵

It is thus argued that as corporations focus on their ‘bottom line’ in terms of profits, they seriously degrade the earth’s ecological balance along with the health and well being of its people as there is little incentive for social or environmental responsibilities – unless it proves to be profitable. As Paul Hawken states:

you can’t get to sustainability from an economic model that strives first and foremost to increase the amount of money large corporations have...We cannot correct environmental problems if we don’t correct the assumptions that cause them.¹⁶

Although it is recognized that companies could not exist without human and natural capital – since every product is created from a combination of the earth’s resources and human labour along with infrastructure provided by local communities such as roads, drinking water, and hospitals¹⁷ – the price tag still does not reflect the true cost of production: the cost of the raw materials, the labour that goes into their

¹³ Balkan 2004

¹⁴ Goldsmith 1996, p.266

¹⁵ Brecher et al 2002, p.3

¹⁶ Hawken 2003, p.50-51

¹⁷ Abbey 2004, p.13

manufacturing, and often the costs of environmental degradation. The economic bottom line that governs the majority of production does not reflect the cost exacted on human life or the natural environment. When companies outsource the manufacturing of their products, they often search for facilities that offer the lowest production costs to satisfy their goal of increased profit. These facilities are often found in countries with the most lax enforcement of environmental and labour regulations where workers in factories are subjected to abuse, harassment, intimidation and physical danger.¹⁸

We're looking at a world with social, economic, and political circumstances that are unacceptable and unsustainable...we want to reach the point where we achieve a better life for us and our children.¹⁹

As Agenda 21 articulates, what society needs is to incorporate a critical interrelationship between social equity, environmental quality and economic vitality.²⁰

2.2 Towards a New Economy

Modern history suggests that economic restructuring and globalization processes have a cyclical character: “The international market, with the political and social shocks it spreads, advances and recedes”, calling for more or for less regulations, depending the cycle.²¹ As corporations continue to concern themselves more about bottom line finances than about the social or natural environments, it is once again time for more regulations.²² As the economic climate of today demands that corporations concern themselves primarily with the bottom line – often resulting in keeping the costs of production as low as possible along with national and local governments’ interests to attract and keep

¹⁸ Maquila Solidarity Network

¹⁹ Dunn as cited in Lang 2000

²⁰ Roseland 1998

²¹ Lang 2000

²² Haughton & Hunter 1994; Lang 2000

foreign investment in place – the need for ‘codes of conduct’ to guide transnational business practices becomes increasingly apparent. The need to transform the traditional accounting theory for economic capital is thus growing towards full cost accounting,²³ also known as the ‘triple bottom line’ – economic, social and environmental accounting.

The international community is working to address this issue of human and environmental accountability. In 1999, the UN Secretary-General Kofi Annan proposed an international initiative: *The Global Compact*. In his address to the World Economic Forum, Annan challenged business leaders from around the world to join the initiative that would “bring companies together with UN Agencies, labour and civil society to support ten principles in the areas of human rights, labour and the environment”.²⁴

Human Rights

1: Businesses should support and respect the protection of internationally proclaimed human rights; and 2: make sure that they are not complicit in human rights abuses.

Labour Standards

3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining; 4: the elimination of all forms of forced and compulsory labour; 5: the effective abolition of child labour; and 6: the elimination of discrimination in respect of employment and occupation.

Environment

7: Businesses should support a precautionary approach to environmental challenges; 8: undertake initiatives to promote greater environmental responsibility; and 9: encourage the development and diffusion of environmentally friendly technologies

Anti-Corruption

10: Businesses should work against all forms of corruption, including extortion and bribery.

²³ Abbey 2004

²⁴ Annan 1999

Annan has stated that without the private sector's active commitment and support there is a danger that universal rights and values will remain little more than words, celebrated lauded documents that lack any substantive import for the lives of ordinary people.²⁵ Yet, *the Global Compact* is *not* a regulatory instrument – it does not ‘police’, enforce or measure the behaviour or actions of companies. Rather, *the Global Compact* relies on principles of public accountability, transparency, the enlightened self-interest of companies, and labour and civil society to uphold the principles upon which *the Global Compact* is based.²⁶ The intention was that through the power of collective action, *the Global Compact* would advance responsible corporate citizenship. The goal was, and still is, for businesses to become part of the solution to the challenges of globalization and to promote a more sustainable and inclusive global economy.²⁷ However, since *the Global Compact* is voluntary, it is “lacking any substantive import for the lives of ordinary people” as Annan had warned as it depends on the “the private sector’s active commitment and support” without any regulatory body to ensure or evaluate its mandate.

Although there are many set backs to shifting the economy towards a ‘triple bottom line’ economic approach, efforts are being made towards a new economy.

2.3 Corporate Social Responsibility (CSR)

Recognizing the need for Corporate Social Responsibility and Accountability, concerned citizens, organizations, and corporations themselves continue to develop Corporate Social Responsibility and Accountability guidelines and value statements.

²⁵ Annan 1999

²⁶ *ibid*

²⁷ *ibid*

Corporate Social Responsibility (CSR) as defined by The Center for Business in the Community is “the overall relationship of a corporation with all of its stakeholders”²⁸. Companies that are socially responsible consider the needs of all stakeholders which include all parties involved who are affected by the positive and negative effects of doing business; not only the owners, investors and suppliers, but also the employees, the local and national governments with which it works or by which it is influenced and the surrounding communities who all have a say in how they are affected.²⁹

Utilizing Corporate Social Responsibility and Accountability guidelines are key factors in determining a business’ relationship towards the social and environmental costs and benefits of their practices. Often within CSR policies, Full Cost Accounting structures – also referred to as the ‘triple bottom line’ – are utilized. Triple bottom line accounting is an attempt to gauge the real value a corporation is providing to society, listing the pros and cons of a company’s business for each category, and not just in dollars. In sum, full-cost accounting – defining economic, social and environmental costs – delivers a single number in dollars that represents all the potential costs and benefits – economically, socially and environmentally.³⁰

The key elements of social responsibility outlined by the Corporate Ethics Monitor includes *Economic*, *Environmental*, and *Social* criteria: investment in community outreach, employee relations, creation and maintenance of employment, environmental stewardship and financial performance.

²⁸ Center for Business in the Community 2002

²⁹ Center for Business in the Community 2002; The Corporate Ethics Monitor 2001

³⁰ Abbey 2004, p.13

A triple bottom line approach to measure performance is thus required utilizing the following three guiding measurement principles³¹:

Economic:

includes wages and benefits, productivity, outsourcing, research development and training. The term economic “includes but is not limited to financial information

Environmental:

includes impacts on air, water, land, biodiversity and human health

Social:

includes workplace health and safety, employee retention, labour rights, human rights and wages and conditions at outsourced operations

Compared to the traditional ‘bottom line’ approach which, mandated by the Corporate Charter, only considers financial inputs and the outputs of the corporations, the triple bottom line approach not only considers the Social, Environmental and Economic aspects as equal, but also as inseparable. Generally analysts who study CSR look for³²:

- a process for establishing ethical goals
- a statement of normative business conduct or code of ethics
- a mechanism for calculating those goals
- a feedback process for policy re-evaluation & potential adjustment
- a reward system and reinforcement mechanisms for achieving ethical performance goals

Although ideas of Corporate Social Responsibility were brought forth more than twenty five years ago, consumer groups, unions, government officials, and some corporations³³ are only now beginning to be taken seriously in the market. As Trans-National Corporations (TNCs) continue to expand their highly mobile influences across the globe, corporate accountability is required for the protection of the local communities, but interests vary greatly. With the abilities and powerful means of communication held

³¹ Pike 2001

³² Abbey 2004

³³ Light 1998

by corporations, it is difficult for communities to “organize and take control of their economic destinies, otherwise ruled solely by a corporate vision of reality”³⁴.

CSR is not a revolutionary style attempting to ‘buck’ the dominant capitalist system, much like protesters at international economic conventions who have often not provided or been in a position to provide coherent workable alternatives, but rather, a “successful environmental restructuring [that] requires individuals and communities [to] become more active in bringing about economic restructuring in their local economies”³⁵. The ‘New’ economy calls for communities, corporations and governments to work towards the concept of sustainable economics incorporating a critical interrelationship between social equity, environmental quality, and economic vitality.³⁶

As the Bruntland Report states: “Sustainable development is development which meets the needs of the present without compromising the ability of future generations to meet their needs”³⁷. When we begin to measure wealth in terms of what the future holds as opposed to immediate economic gains, we might see “fundamental changes in the ways in which people treat nature, and treat each other”³⁸.

2.4 CSR’s Profitability

Although some argue that it is the government’s responsibility to impose CSR guidelines on business, business also has an interest in encouraging the improvement of social conditions, which are important factors for stable economic development. As CSR guidelines and reporting continue to recognize the interdependence between social,

³⁴ Light 1998

³⁵ Skinner 1997, p.69

³⁶ Roseland 1997

³⁷ Haughton and Hunter 1994, p.16

³⁸ *ibid*, p.24

environmental and economic well being, it is also clearly proving to be good for business³⁹, and “business success is ultimately dependent on the success, strength, and optimism of the society in which it operates”⁴⁰.

Furthermore, stakeholders nowadays are pushing to see that these standards are met. It is becoming increasingly clear that market forces, such as concerned customers, vocal employees and pragmatic investors who “are worried about their holdings”, are demanding social responsibility from their corporations⁴¹; and ultimately the survival of the corporations depends on their stakeholders. As the world's consumer market becomes increasingly aware and concerned with the current labour, social, and economic conditions that exist in the communities from which consumer's purchase their goods, the social responsibility of corporations is increasingly visible – profitability and success of a company is now at risk⁴². Surveys are showing that a high percentage of consumers and investors worldwide are influenced by social and environmental practices.⁴³ A poll conducted in 1999 by Environics of citizens’ opinions of CSR showed that⁴⁴:

- 56% formed opinions of companies based on its social and environmental responsibility ahead of brand reputation and business fundamentals.
- 43% of Canadians 39% of the British and 35% of Americans feel that the role of large companies in society is to set higher ethical standards and help build a better society.
- 51% of customers in North America and Australia/New Zealand have punished a company [by not purchasing their products] in the last year for not being socially responsible.
- 80% of Canadians were willing to pay more to buy socially or environmentally responsible products (2003 poll).

³⁹ Lang 2000

⁴⁰ Prat 2001

⁴¹ Pike 2001

⁴² AccountAbility News 2002

⁴³ Abbey 2004

⁴⁴ Abbey 2004, p.4

These statistics reveal:

*...a profoundly optimistic vision for change. One in which the needs of the market and of society merge, so that people power can shape economic forces to make the world a better place.*⁴⁵

Canadians also have expectations of corporations that go far beyond profit maximization. In January 2002, the Canadian Democracy and Corporate Accountability Commission confirmed that the vast majority of Canadians valued the corporation as an economic actor but also felt that:

*companies have responsibilities that extend beyond the maximization of shareholder returns [and that] corporate actors, at home and abroad, conduct their affairs in a way that maximizes benefits to all stakeholders, including employees, suppliers and members of the communities in which the corporations operate.*⁴⁶

As a result, it is noted that corporations can truly capitalize on social and environmental sustainability – “CSR will be good for profitability”⁴⁷ aiding businesses in staying competitive and in the market. Recently, the Dow Jones Sustainability Index stated that it believes that corporate sustainability performance is an investable concept, which is a crucial step towards “driving interest and investments in sustainability to the mutual benefit of companies and investors”⁴⁸. Therefore stakeholders will push towards sustainability performance as this benefit strengthens and continues to “have a positive effect on the societies and economies of both the developed and developing world”⁴⁹.

⁴⁵ Abbey 2004

⁴⁶ Canadian Democracy and Corporate Accountability Commission, p.2

⁴⁷ Henderson 2002

⁴⁸ Dow Jones 2001

⁴⁹ Dow Jones 2001

2.5 Accountability

Even though corporations may inherently want to be part of the CSR initiative — since it is great publicity and stakeholders are demanding it — there is great concern about true accountability and not simply increasing public relations through media and hype, while not actually effecting change.

If globally we are to truly achieve this new paradigm shift where society incorporates a critical interrelationship between social equity, environmental quality, and economic vitality, corporations must be held accountable. One must ask if we as the global society really have the time to wait for voluntary standards – such as *the Global Compact* or the free market – to balance our desire for profit at the expense of the social and environmental considerations. Even conventional economic theory recognizes that Adam Smith’s ‘hidden hand’ does not always balance since the free market produces unintended side effects such as pollution for which the producer does not have to pay.⁵⁰

*Unregulated markets do nothing to correct the inequalities of wealth; indeed, they often intensify the concentration of wealth, leading to expanding gaps between the rich and the poor.*⁵¹

Even though business has “a real impact on how society develops...and...has a responsibility to play that role with high ethical and moral standards, with consciousness and with purpose,”⁵² the market cannot be relied upon to solve sustainability problems. And although there has been an increase in the number of corporate social responsibility value statements and reporting by corporations, without an accountability structure in place, it is difficult to measure or verify any positive impacts.

⁵⁰ Brecher et al 2002, p.5

⁵¹ Anderson & Cavanagh 2005, p.12

⁵² Prat 2001

As the *Economist* and *Financial Times* writer, Alan Pike reports that:

*even though social and environmental performances are increasing, a lack of an agreed upon standardized framework for corporations allows widespread criteria, making evaluation and comparisons difficult.*⁵³

Similarly, Deb Abbey states that:

*Only a very small percentage of these companies are filing relevant reports. And there is still a disconnect between reporting and performance. Companies are becoming more transparent about their actions, but not necessarily integrating sustainability concerns into their decision making.*⁵⁴

Because 'good practice' is not spreading fast enough in the context of the big debates over globalization⁵⁵, regulation, in terms of a framework to measure sustainable development will be very difficult without the assistance and regulatory backing of governments.⁵⁶ Governments and businesses must therefore incorporate a framework to monitor and hold corporations accountable to assessing their businesses' economic, environmental and social performances. As Koffi Annan, Secretary General of the United Nations believes:

*Without the private sector's active commitment and support, there is a danger that universal values will remain little more than fine words-documents whose anniversaries we can celebrate and make speeches about but with limited impact on the lives of ordinary people.*⁵⁷

One of the most significant recent developments in CSR is the emergence of internationally recognized monitoring, accounting and reporting guidelines and standards of conduct such as the Global Reporting Initiative (GRI), AccountAbility 1000 and

⁵³ Pike 2001

⁵⁴ Abbey 2004, p.12

⁵⁵ *ibid*

⁵⁶ Roseland 1997; Cook 2000

⁵⁷ Annan 1999

Social Accountability International (SAI) standards.⁵⁸ These standard indicators tell firms how they are performing in terms of their stakeholders (ie: employee, members, and communities) while offering a process in order to improve if needed. Yet there are many different ways to perform accountability testing. If policies were implemented with the ability to quickly measure, evaluate, and compare social and environmental benefits, businesses could step away from bottom line profit maximization and actively address fair, sustainable development and the future of their businesses.

Without such policies in place, as a starting point large corporations must be externally or independently measuring their efforts producing very clear, accountable reporting. When a corporation reports on their activities through an external auditor, communicating both positive and negative results, it holds the corporation accountable. There is a high risk of using CSR simply to promote a corporation's public relations.⁵⁹ External corporate accountability is therefore required to effect change ultimately democratizing the structure of corporations by allowing civil society, and not the corporations, to decide on what is 'responsible'. As an example, Vancity Credit Union does a very good job of reporting as they are externally verified.⁶⁰

2.6 Corporate Restructuring

One must also be aware of the debate on the potential legal restraints on CSR and a corporation's performance. By law, the 9 pillars of a corporation clearly define the bottom line, in terms of profit maximization, as a corporation's main mandate.⁶¹ Thus, if

⁵⁸ See Table of Acronyms and Abbreviations

⁵⁹ Balkan 2004

⁶⁰ <https://www.vancity.com/MyMoney/AboutUs/OurValues/CorporateSocialResponsibility/SocialAudit>

⁶¹ Balkan 2004; Hinkley 2004

a corporation decided to be responsible towards social or environmental issues at the expense of potential profit gains, shareholders could sue for their financial losses.⁶²

Although the literature has demonstrated that CSR will aid businesses in staying competitive and in the market, and that the demands for social and environmental concerns are increasing, the paradigm shift will only occur if there is “a fundamental re-evaluation of what is a corporation, who does it answer to, and what are its values and intentions in the world”⁶³. Therefore, if society is serious about incorporating social and environmental criteria into the current economic system, the corporate charter needs to be re-modelled.⁶⁴ This process may be difficult but not impossible since corporations are created by laws whereby those same laws are created by governments on behalf of citizens, who can therefore change them in a democracy.⁶⁵

*A corporate charter represents a privilege – not a right – that is extended in return for the acceptance of corresponding obligations. It is up to the people, the members of civil society – not the fictitious persona of the corporation – to define these privileges and obligations.*⁶⁶

Since “the corporation’s legally defined mandate is to pursue, relentlessly and without exception, its own self interest regardless of the often harmful consequences it might cause to others”⁶⁷ even at the expense of the public – under whose laws corporations were created – Robert Hinkley, a corporate lawyer, is attempting to change the corporate charter to incorporate social and environmental aspects. The only reason corporations act in the way that they do is because they are bound by corporate law to try

⁶² ibid

⁶³ Hinkley 2004

⁶⁴ Hinkley 2004; Balkan 2004

⁶⁵ Hinkley 2004, p.5; Abbey 2004

⁶⁶ Korten 2001, p.265

⁶⁷ Balkan 2004, p.2

to make a profit for their shareholders.⁶⁸ Hinkley's new code he calls the 'Code for Corporate Citizenship' is thus "a means for challenging the corporation at its most fundamental level"⁶⁹ and will also stop corporations from shifting the blame for their abuse of the public interest onto the customers.⁷⁰ With the following twenty-eight words added to the Corporate Charter, Hinkley feels that the new 'Code for Corporate Citizenship' is "a systemic, holistic solution...instead of treating the symptoms, it eradicates the disease."⁷¹

The duty of directors henceforth shall be to make money for shareholders but not at the expense of the environment, human rights, public health and safety, dignity of employees, and the welfare of the communities in which the company operates

Hinkley feels that by adding both social and environmental safe guards into the corporate charter, there can be a shift in the way corporations run their business:

People already know in their hearts that polluting, violating human rights, making people sick, treating people like machines, and bullying your neighbours are wrong...The code gives them hope that there is a solution...it's a strange notion that states should allow for the formation of powerful institutions that then go forth and abuse the public interest. I think the time has come for us to recognize this mistake and correct it.⁷²

2.7 Corporate Social Accountability: Finding common ground values for action towards sustainable global solutions

As the literature demonstrates, as Trans-National Corporations continue to expand their highly mobile influences across the globe, corporate accountability is required for the protection of the local communities. As interests vary greatly, the need for non-voluntary 'codes of conduct' to guide corporate practices becomes increasingly apparent.

⁶⁸ Hinkley 2004, p.5; Hawken 1997

⁶⁹ Hinkley 2004, p.7-8

⁷⁰ *ibid*

⁷¹ *ibid*

⁷² Hinkley 2004, p.9-10

The global economy has and continues to open up new possibilities and exciting new technologies that ought not be branded as the sole root of the global social and ecological crisis. We have created this economy through our own laws, and we have the ability to re-create it and reinvent the free market economy towards social, environmental and economic sustainability. Stakeholders the world over will continue to influence the need for total respect of our surrounding environments, along side an understanding of the larger global economy. Local spaces in a global context can begin to foster the essential mix between capitalist advances in profit and an understanding and respect for local social and environmental realities.⁷³

As Shellenberger suggests, there is a growing opportunity to create value based realities providing “big, positive, visionary solutions that solve multiple problems instead of complaint based activism” viewing value based initiatives as “the tectonic plates beneath surface political change”⁷⁴. As Abbey notes, “no one believes in child slavery or sweatshop labour or environmental degradation and all of us want to live in strong, sustainable communities”⁷⁵. These authors explain that as humans we have deeply held values and common sense survival strategies and that now there is a need for a shift in our values and in our every day actions that will create a new reality without our current global economic contradictions. We need to redirect corporations to serve new values, not solely as profit driven, but more as a human growth potential, taking into account all aspects of the economy: the social, environmental, and the economic.

⁷³ Hawken 2003

⁷⁴ Shellenberger 2005

⁷⁵ Abbey 2004, p.2

Hawken stated in 'Natural Capitalism' that "commercial institutions, proud of their achievements, do not see that healthy living systems – clean air, water, healthy soil, stable climates, are integral to a functioning economy"⁷⁶, and times have changed; corporations, governments and citizens are recognizing the interdependence of the global economy and that sustainability must be about improving the quality of life of all people on the earth and honouring all forms of life.

2.8 What is an Ethical Purchasing Policy?

An Ethical Purchasing Policy is the creation and application of criteria and processes to ensure that goods and services are purchased in accordance with social and environmental values. This means creating transparencies so that, at every point in the production process, social and environmental values can be measured. This involves laying out both the social rights and the environmental guidelines and principles that need to be observed through verification and compliance right down the supply chain.

The Maquila Solidarity Network has outlined six key points needed in an EPP to make it effective⁷⁷:

1. **Respect for workers' rights**: Compliance with local labour laws and, at a minimum, the 8 core conventions of the International Labour Organization (ILO).
2. **Public disclosure of names and addresses of factories**: Supplier disclosure of factory locations is the key enforcement tool of an Ethical Purchasing Policy since it discourages suppliers from providing false information on factory conditions.
3. **Monitoring of compliance**: Typically, Public Institutions do not have the resources to carry out monitoring themselves. Suppliers should be responsible for monitoring their supply factories. Preference in granting

⁷⁶ Hawken 1997

⁷⁷ Maquila Solidarity Network 2004

new contracts should be given to suppliers that use acceptable third-party verifiers and are willing to publicly disclose the findings of third-party audits as part of their annual reports.

4. Annual reports: The Ethical Purchasing Policy should also require suppliers to provide annual reports on their progress in achieving compliance with the policy. Reports should include information on the supplier's monitoring and verification program, the name of the third-party auditing organization(s), the findings of third party audits, and corrective action taken. Annual reports should be available to the public. A number of major US brands are currently providing this level of public reporting through the Fair Labor Association (FLA).

5. Complaints process: Public institutions should create a mechanism to receive third-party complaints of violations of the Ethical Purchasing Policy. Suppliers should be required to respond to all legitimate complaints with verified evidence that the violations have either not occurred or corrective action has been taken. Those findings should also be available to the complainant and to the public.

6. Corrective action: An Ethical Purchasing Policy will give your institution the mandate to require suppliers to take corrective action when violations are identified and to provide verified evidence that those violations are being eliminated. Manufacturers should be given sufficient time and opportunities to achieve compliance. A corrective action plan with reasonable deadlines should be developed.

2.9 Why is an EPP important?

Corporate entities potentially have a powerful force for good in the world, and therefore many corporations and corporate citizens do give back to the communities in which they work or they utilize some of their profits for philanthropic projects. However, workers continue to be subjected to verbal abuse, harassment, intimidation and physical violence in many workplaces; the worst abuse, including imprisonments, murders and 'disappearances' are being applied to workers trying to organize for collective relief.⁷⁸ NoSweat SFU believes it is time to turn away from abusive social and environmental sweatshop conditions under which some of our community products are being made. It is

⁷⁸ Maquila Solidarity Network 2003

time for policies that guide corporate social accountability through globally accepted social and environmental UN and ILO conventions.

As universities buy large volumes of goods, it is imperative that policies such as the ones at McMaster and the University of Toronto are widely adopted. These existing policies have already moved corporations to disclose production locations in order to monitor and comply with current Ethical Purchasing codes. Currently it is very difficult to monitor the production of anything but apparel goods and limited food items. However, as the demand for ethically produced goods grows, we anticipate the growth and diversification of independent monitoring systems. For this reason NoSweat SFU advocates for the adoption of policies that have capacity to grow as opportunities arise.

As SFU's mandate is to maintain an “open and inclusive university...(and) to engage all our communities in building a robust and ethical society”⁷⁹, the SFU community is entitled to a guarantee that products manufactured for our community are made under ethical and humane conditions.

As municipalities are also run with tax paying dollars, it is in the interest of the citizens to uphold the ILO and UN conventions of which Canada is a signatory; EP policies will hold public institutions accountable to this mandate as Ethical Purchasing involves the creation of policies and mechanisms needed to ensure that the goods and services we buy are produced and delivered under conditions which do not involve the abuse or exploitation of human beings or the environment.

Ethical Purchasing is a part of a shift in a global economy growing from the recognition that we need to assume the true costs of production and consumption.

⁷⁹ Simon Fraser University – www.sfu.ca

Recognizing the value of the social and environmental aspects of our production on an equal basis with our economic principles will ensure sustainable prosperity for future generations. As mentioned in section 2.1, every product we purchase is created from a combination of the earth's resources and human labour, and these are two of the determinants that influence the price tag on the products that we buy. However the price tag does not always reflect the true cost of production – the cost exacted on human life or the natural environment – and companies continue to outsource the manufacturing of their products in countries with the most lax enforcement of environmental and labour regulations. Cost reduction often means environmental degradation with workers in factories that are subjected to abuse, harassment, intimidation and physical danger. According to Maquila Solidarity Network (MSN), today's sweatshop industry is a product of a global economy in which retailers and manufacturers seek greater profits in a highly competitive industry by contracting production wherever labour and environmental costs are low⁸⁰, whether it is in China, Honduras, Winnipeg or Vancouver.

What is therefore needed is careful monitoring of the widening problems stemming from increased, unchecked, business practices. To be credible, EP policies require an independent monitoring system – and not just voluntary assurances – that comply with international standards. Unless voluntary codes commit the companies to comply with explicit international human and labour rights standards and conventions they have little effect.⁸¹ Therefore, No Sweat SFU has argued that university and municipal EP policies require an independent monitoring system, as opposed to simple voluntary assurances.

⁸⁰ Maquila Solidarity Network, 2004

⁸¹ Jenkins et al. 2002

3 RATIONALE OF PROJECT

3.1 Action Research as modus operandi

In September 2002, students in a Communications class at Simon Fraser University researched the capacity of Ethical Purchasing Policies at other Canadian institutions. In November of that year, the student group began to raise awareness – by educating the SFU community with tables of information, writing articles in the SFU News and the student Newspaper (The PEAK), as well as putting on a “Sweatfree Fashion show” – and lobby their own SFU Board of Governors for the formation of an Ethical Purchasing Task Force. In April 2003 the Board of Governors endorsed the students' motion (see Appendix A). A multi stakeholder Ethical Purchasing Task Force, chaired by SFU Vice President of Finance and Administration Pat Hibbitts, was given the job of making recommendations to the Board on the policy’s regulatory language and implementation (see Appendix B).

These initial steps in the first year to gain the attention and commitment of SFU’s administration towards EP Policy adoption required constant research, planning, action, observation and reflection, even though this was just setting the stage for a larger 3 year EPP project. Once the EPP Task Force was created, much more coordination on the part of the student research team, including the members of the new Task Force, was required. For example, all interested parties had to research the possibilities and constraints of the policy and the NoSweat SFU team had to prepare much more research to address the Task Force’s specific questions, and present the findings at each meeting (see Appendix

C). This became so arduous that the Task Force had a legal report prepared for their review (see Appendix E).

Action Research was seen by the student research team to be the perfect way to address the challenges faced by the new EPP Task Force. Since the challenges to adopting an EPP at SFU were many, and case studies of EPPs in Canada were too few and too recent to investigate, it was noted that qualitative research rather than quantitative research could be utilized to effectively advise this decision making Task Force. As Murphy states in *Transforming Ourselves, Transforming the World: An Open Conspiracy for Social Change*, “One needs strategized action and reflection tools towards effective social change”⁸². Our NoSweat SFU group set out with this in mind, and Action Research was the way to effect it.

3.2 Convening discussion about EPPs – The May 7-8 2004 EPP Conference

Within the first year of operation, the SFU EPP Task Force became stalled with very real concerns about the “how-to” of Ethical Purchasing Policy adoption and implementation. Although there was considerable political will to adopt such a policy, it was important to members of the university community that something meaningful and actionable would come out of this process. This was a growing concern across the country for anyone considering an EP Policy – how to make an EPP work in practice.

The student group was requesting that SFU adopt an Ethical Purchasing Policy similar to McMaster University's policy (see Appendix G) as an initial step and then

⁸² Murphy 1999

work out the implementation details. However, SFU's purchasing staff were concerned about 3 issues with this proposal:

- 1) Disclosure form
- 2) Compliance structure
- 3) Monitoring ability and costs

The SFU administration's counter proposal was a voluntary code to solve these issues. The students then requested – after researching and presenting these findings – that Task Force members move away from their proposed policy position that would require only ‘*voluntary*’ supplier compliance believing that without supplier accountability, the policy would be mere public relations rhetoric as distinct from enforced compliance.

Acknowledging the necessity to create policy through multi-stakeholder collaboration and agreement, SFU's VP Finance and EPP Chair Pat Hibbitts endorsed a workshop conference proposal put forward by the No Sweat SFU Student group. The conference titled “*Ethical Purchasing, Human Rights and Public Policy Initiatives*”, was held on May 7-8th, 2004 at Simon Fraser University's Harbour Center Campus, and succeeded in bringing together a wide spectrum of provincial and national stakeholders.

Participants included representatives of businesses, governments, public institutions, unions, non-governmental organizations (NGO's) and citizens from across Canada. University administrators with EPP experience, legal experts, and experts in Corporate Social Responsibility led workshops that addressed the challenges and solutions for implementing accountable Ethical Purchasing Policies at Canadian public institutions.

The conference provided synopses and how-to workshops on the key elements of Ethical Purchasing Policy development, all of which was looked at through the lens of lessons to be learned, challenges to be met, and opportunities to be had.

3.3 Evaluating Outcomes of EPP – Questionnaire

At the time of the conference, organizations which had EP Policies in place in Canada had very little historical experience in terms of implementation and they had many practical set backs that were beyond the capacity of their individual organization which made it quite difficult to determine if their EP policies were effectively able to hold businesses practices accountable to *any* social or environmental criteria. In turn, what came out of the conference were common ground issues that required further collaboration on implementation strategies. Therefore 2 years after the EPP Conference, the *Specific Aims of the Project* were further evaluated through the Questionnaire where data was collected from administrative purchasers, suppliers, & staff from 2 Canadian Universities (McMaster and Toronto) who have passed EP Policies two and four years ago respectively, and are both in the implementation stage, along with Simon Fraser University, University of British Columbia, and the City of Vancouver who have all recently adopted EP policies.

3.4 Specific Aims

Based on the Rationale, the project had 6 Specific Aims:

1. To describe the barriers public institutions face while implementing Ethical Procurement Policies (EPP).
2. To determine the effects of EPP on public institutional purchasing behaviour.

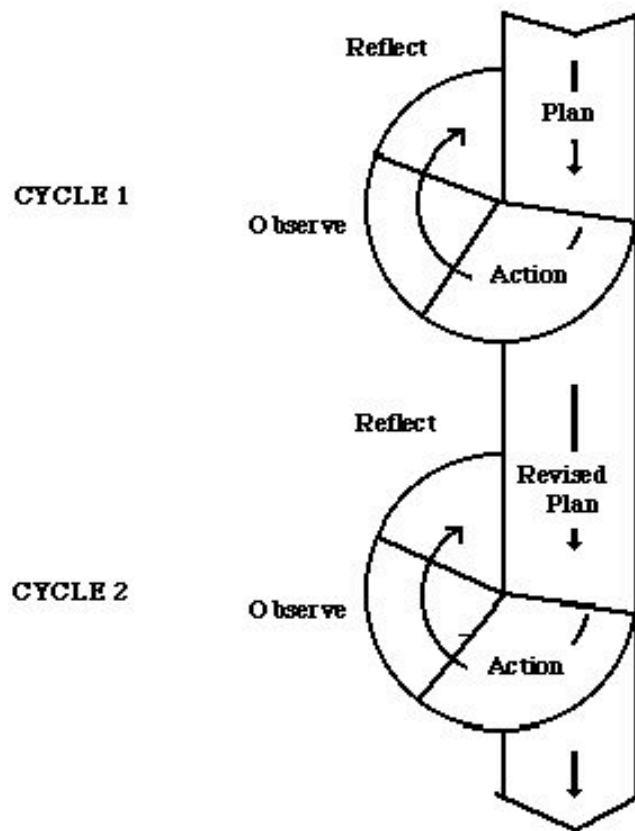
3. To determine the effect of EPP criteria on institutional purchasing decisions: Change in public institutional purchasing behaviour and / or the suppliers already servicing university and municipal contracts.
4. To determine the effectiveness of EP policies at implementation and monitoring.
5. To determine if EPP compliance increases the level of accountability in Corporate Social Responsibility (CSR).
6. To document the involvement of a citizen action group in implementing EPP.

4 METHODOLOGY

4.1 Action Research

Action Research is a research methodology that can be described as ‘learning by doing’ where a group of people can identify a problem, act to resolve it, and see how successful their efforts were, in order to act again to improve it (See Figure 4.1: Action Research Cycles of Learning).

Figure 4.1: Action Research Cycles of Learning⁸³

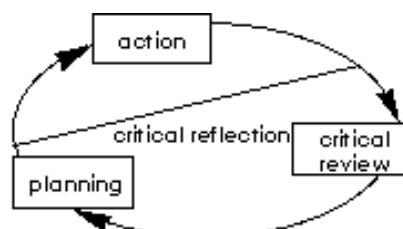


Source: Kemmis and McTaggart 1988

⁸³ Kemmis and McTaggart 1988

Action Research is thus “a flexible spiral process which allows action (change, improvement) and research (understanding, knowledge) to be achieved at the same time”⁸⁴. This process of understanding allows for a more informed change while at the same time being informed by that change. In Action Research, the importance of *Critical Reflection* within the cycle of *Action, Planning and Reflection* is crucial. Although many people in their daily lives naturally perform an action-planning cycle, often they do not perform the *reflection* component which is essential for research conclusions. Without it, researchers may overlook some important evidence that did not match what they expected or assumed. Therefore, in each cycle there is *Action* followed by *Reflection* → What worked? What didn't? What have we learned? *Reflection* is followed by *Planning* → with informed understanding achieved and conclusions drawn, the research defines how to act differently. *Planning* is followed by *Action* → where the plans developed are tested with further action (see Figure 4.2: Action Research Cycles of Learning). As McTaggart and Kemmis have based their philosophy of Action Research on critical theory, their model of action research is appropriate for groups wishing to take action in the interest of social justice.

Figure 4.2: Action Research Critical Reflection⁸⁵



Source: Dick 2002

⁸⁴ Dick 2002

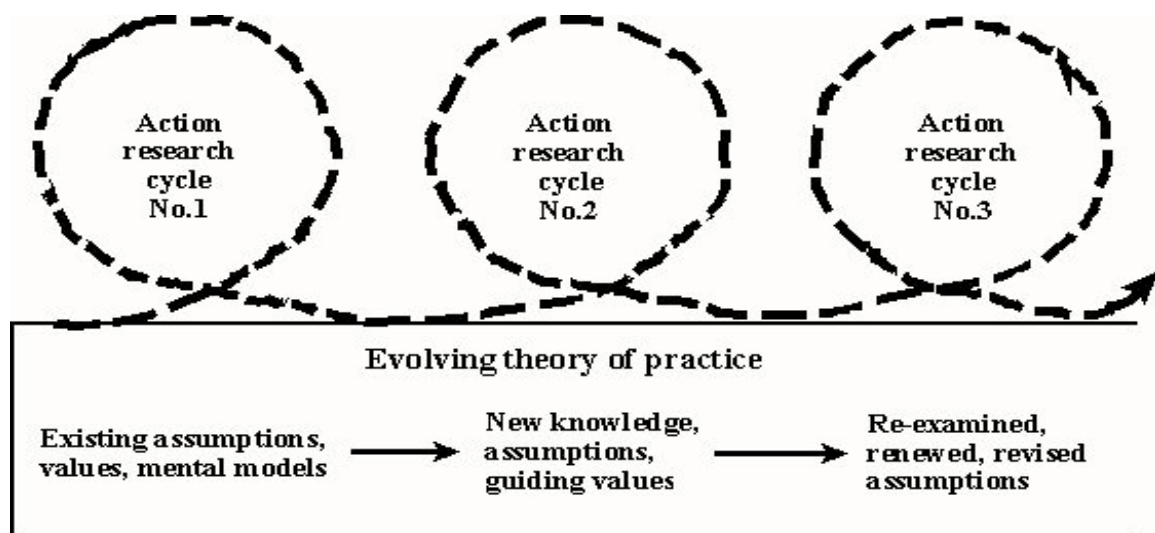
⁸⁵ ibid

By learning more about the topic at hand through cycles of learning, Action Research allows the researcher to redefine the research. This increases the design's effectiveness as imprecise answers can help to refine questions and methods testing the assumptions underlying the plans within each cycle through action. Furthermore, through the involvement of all interested parties providing more information about the situation (such as a multi stakeholder EPP Task Force), along with *critical reflection* in each cycle, it provides many chances to correct errors leading to better action and better research. Action Research is therefore not simply a common problem-solving activity but rather:

*Action Research...aims to contribute both to the practical concerns of people in an immediate problematic situation and to further the goals of social science simultaneously.*⁸⁶

(see Figure 4.3: Action Research Evolving Theory of Practice)

Figure 4.3: Action Research Evolving Theory of Practice⁸⁷



Source: Dick 2002

⁸⁶ Gilmore et al. 1986

⁸⁷ Dick 2002

Another reason that an Action Research methodology was a perfect fit to study EPP within the new EPP Task Force was that continuous cycles of learning seemed inevitable with such a diverse group which included students, professors, VP Finance & Administration, bookstore and purchasing managers, unions and policy makers at SFU. Therefore a collaborative approach was an essential ingredient to the process. As outlined by Gilmore et al⁸⁸:

...there is a dual commitment in action research to study a system and concurrently to collaborate with members of the system in changing it in what is together regarded as a desirable direction. Accomplishing this twin goal requires the active collaboration of researcher and client, and thus it stresses the importance of co-learning as a primary aspect of the research process.

Although ideas and opinions on how to effectively achieve an EPP were quite different within the Task Force from the start, our individual moral values were similar – we all agreed from the start that ILO and UN conventions should be upheld in Canada. Whether or not SFU could make a policy to uphold these conventions or how that could, or should, be implemented was of considerable disagreement.

Action Research thus achieves its successful action outcomes by involving people in the planning and action process. Through involving stakeholders, it allows the process to be flexible and responsive to situations and people while seeking to remove the gap between the “deciders and doers” since “those who are affected by the decision join those who will carry it out”⁸⁹. This allows for more complete information and better participation in the action process offering better results.

⁸⁸ ibid

⁸⁹ Dick 2002

In Rist's, "Influencing the Policy Process with Qualitative Research", he states that if researchers want to influence the policy process there must be a redefinition of the context in which to look for a linkage between *knowledge* and *action*. Rist suggests that policy should not be tackled through the notion of "decision making as an event" which is the way he sees most popular and academic literature is written. Rist claims, that the "decision making as an event" approach is weak as it does not take into consideration "the complexity of governmental decision making [which] often defies compartmentalization", but rather simply assembles to review a problem or opportunity, considers the alternatives, discusses the advantages and disadvantages of each, to then chose a direction which best suits their purposes. Rist, understanding that policy decision making is not an event which can be easily defined but rather sees it as a process, advocates the *nature of policy decision making* as "an ongoing set of adjustments, or midcourse corrections". In order for the qualitative research process to be influential on policy, Rist outlines what he considers a better approach called "the policy cycle" where, through three phases of policy formulation, policy implementation, and policy accountability, the research questions and focus have the ability to change from one part of the cycle to another dancing with the complexities of real dynamic situations. Compared to the "decision making as an event", Rist sees the "policy cycle" approach much truer to real situations.⁹⁰

The first stage of the policy cycle is the *policy formulation*, where one must answer the many pressing information needs through compiling relevant information on the issue which Rist claims are clustered around three broad sets of inquiries:

⁹⁰ Rist 1994

1) understanding of policy issues at hand, 2) what has taken place previously in response to this condition or problem, and 3) what is known of previous efforts and their impacts that would help one choose among present day options. Rist warns though that the window of opportunity in this first stage is often short and thus the information needs to be ready and in a form that enhances quick understanding. The intended and unintended consequences of the various policy instruments and tools that may be selected to implement the policy could also be investigated at this stage as Rist suggests. I believe that this is often the one area that activists are getting better at. Disseminating the information in a small clearly organized package often results in successfully gathering the attention of the public and politicians. This is where activists in Vancouver have been most successful at the university and municipal levels as NGOs, unions and students.

The second phase of the policy cycle is the *policy implementation* stage which takes the policy initiatives and goals from the formulation stage, and transforms them into programs. Rist also breaks this stage into three clusters: 1) information on the implementation process [case studies, program monitoring and evaluation], 2) research questions that prompted the policy response in the first place [tracking the initial question condition as it shifts to check in to see if the policy implementation is addressing the actual need], and 3) the implementation response to the initial policy demand in line with the intended results [is it addressing the issue].

Policy accountability, as the third phase comes into play when the policy or program is sufficiently mature to address questions of accountability, impacts or outcomes looking at whether the program or policy accomplished its intended objectives. Rist believes that qualitative research at this stage is the best grounded means to

investigate policy impacts and outcomes as it allows for the study of anticipated and unanticipated outcomes, changes in understandings and perceptions as a result of the policy, and the strength and weaknesses of the administrative capacity. Again Rist breaks this stage into three information clusters: 1) asking whether the original objectives and goals of the policy stayed in place through implementation 2) assessing what changes may have occurred in the problem or condition that prompted the policy, and 3) the accountability of the management or leadership's focus on the procedures, monitoring and effectiveness of the policy.

NoSweat SFU agreed with Rist's point of view on influencing the policy process. Many activists and NGOs believe that citizens can simply identify a problem in the world and demand that a policy is created to address the issue while not engaging in the three phases of the policy process, making the same shortfalls seen through "decision making as an event". Where many activists and NGOs stop after the educational component of their campaigning, expecting that action will be taken, activists need to guide the policy makers throughout the three stages of "the policy cycle" in order to effect real change. NoSweat SFU took heed of Rist's analysis to complete the difficult task of the "policy cycle" which requires dedication and knowledge beyond simple campaigning and policy formulation. We need to know our solutions work in practice; and NoSweat SFU set out to find out.

4.2 EPP Conference Agenda and Workshop Themes

The conference was designed to address the practical concerns and set backs raised in Section 3 "Rationale of Project". The results of the May 2004 Ethical Purchasing Conference – organized by me in collaboration with NoSweat SFU – was

analyzed utilizing the following *Conference Agenda* and *Workshop Themes* designed to address the practical concerns:

1. Corporate Social Responsibility, Ethics and Global Human Rights Issues
2. Ethical Purchasing Policy Creation
3. Legal questions for BC Universities/Post-Secondary Institutions in EPP creation and implementation
4. Policy Compliance Implementation

The Conference opened with an evening session that featured keynote speakers on the aforementioned four theme topics. The Workshop Day began with a brief Plenary Session to introduce participants to the workshop Facilitators and Speakers/Experts who participated in the four topic area workshops. The workshop themes were presented as follows below in 4.2.1 to 4.2.4.

4.2.1 Corporate Social Responsibility, Ethics and Global Human Rights:

International Human Rights law is very clear about labour issues, but countries like Canada are often challenged in their attempts to implement the concepts laid out in ILO and UN conventions. In a discussion about something as potentially compartmentalized as a procurement policy, it is vital to keep in mind the broader, international context that is the basis for our discussion: the exploitation of workers and the environment in order to increase profit margins. Public institutions can be on the leading edge of this debate, but instead it has been the private sector that is leading the way in the area of “Corporate Social Responsibility”. We will learn about and synthesize the lessons and challenges that the private sector has faced in implementing some of these Corporate Social Responsibility policies, and discuss how we can generalize these lessons to apply to public institutions.

4.2.2 Ethical Purchasing Policy Creation:

While much work has already been done in the area of policy creation, much remains. What exactly needs to be in a policy to make it meaningful? How do we balance the needs of the producers, the suppliers, the purchasers and the consumers? In addition to answering these and other questions, we will work together to identify a template of the important features of a Canadian Ethical Purchasing Policy that works. By doing this, students and administrators at post-secondary institutions would be able to learn from and build on the experiences of their contemporaries, and avoid spending scarce resources on “re-inventing the wheel”.

4.2.3 Legal Questions for BC Universities:

There are myriad legal questions that must be addressed when dealing with ethical procurement issues: privacy, liability, trade law, etc. We will dissect (in layman’s terms) the perceived legal barriers to adopting an Ethical Purchasing Policy at a public institution, and examine the ways in which post-secondary institutions can insulate themselves from any legal liability while ensuring that any such policy is actually capable of effecting meaningful change. We will also have the opportunity to examine some of the legal imperatives for Ethical Purchasing Policy adoption. Most of the discussion will be applicable to all of Canada, with special consideration paid to any issues that may be specific to British Columbia.

4.2.4 Compliance & Implementation:

Compliance & Implementation is perhaps the “stickiest” area to be addressed at the conference, simply because it is an area in which the least work has been done. The

question becomes: so now that we have a policy in place, what do we do with it? Part of the difficulties here can be avoided by doing some homework; having an effective policy to begin with, fostering relationships and being open with suppliers and other stakeholders. Again taking a cue from our colleagues from McMaster and the University of Toronto, we will look at some of the challenges to be faced in the implementation phase of this process, and examine ways to create working and living policies.

4.2.5 Workshop questions for participants to consider:

The following questions for each of the above themes were given to each participant to consider and answer during the workshops:

- What can we learn from past experience in this theme area?
- What are the challenges for developing an ethical purchasing policy?
- What are the opportunities imbedded in these challenges?
- How do we address these challenges? That is, what do we need to do?
- Who can help address these challenges and opportunities?
- How can we apply these lessons to Public institutions in British Columbia and Nationally?
- What are the important recommendations that will help Public institutions develop and implement an ethical purchasing policy?

The Closing Session, facilitated by me, brought all participants together to present group reports from each workshop along with a consensus discussion of National and BC University/Post-secondary EPP feasibility. A final Conference report was written by me, in consultation with NoSweat SFU (see Appendix D).

4.3 Interviewing EPP experts – Questionnaire

The research questionnaire sought Ethical Purchasing Policy (EPP) information from EPP leaders in Canada currently engaged in their institution's EP policy implementation. Outlined were several central questions which intended to encourage their thoughts surrounding both broad issues of core principles and a more focused examination of the practicalities of implementing Ethical Purchasing Policies (EPP).

Questions were selected carefully from NoSweat SFU's 'cycles of learning' as issues were raised in the three year process of our plans, actions, observations and reflections. The Questionnaire is in the Appendix H).

5 RESULTS

5.1 Action Research

Action Research was an important part of this project. The cycles of learning guided the progress forward towards final adoption of an EP Policy at SFU on November 24th, 2005. In this section, the four cycles of this project (planning, actions, observations and reflections) have been fleshed out to demonstrate the evolution of theory in this project (Figure 4.1). Each cycle demonstrates what our original assumptions were at each stage, our new knowledge gained, and our renewed and revised assumptions.

Table 5.1: The project's Action Research Cycles of Learning

- Cycle #1: Initial EPP research, NoSweat SFU start up, and engaging the SFU community and administration
- Cycle #2: EPP Task Force at SFU
- Cycle #3: The EPP Conference, May 2004
- Cycle #4: Policy adoption, The Task Force part 2

5.1.1 Cycle #1 → Initial EPP research, NoSweat SFU start up, and engaging the SFU community and administration:

This initial cycle was long and slow, and it was not well formulated; it required going back to the experiences one year later to flesh out any understanding of the cycle.

Plan #1: As mentioned earlier, in September 2002, students in a Communications class at Simon Fraser University researched the capacity of Ethical Purchasing Policies at other Canadian institutions. After initial research, the student group hypothesized that it was not only possible for public institutions to adopt EPPs, but that it could be rather simple to institute.

Action #1: In order to gain the attention of SFU’s administration, in November of that year, the student group began to raise awareness and lobby their own SFU Board of Governors for the formation of an Ethical Purchasing Task Force. While educating the SFU community with tables of information, writing articles in the SFU News and the student Newspaper (PEAK), as well as putting on a “Sweatfree Fashion show”, the student group also gathered a variety of signatures from Department deans, organizations on campus and from individual students.

Observation #1: As the awareness raising on campus grew, it became clear that there were different views on campus, not only within the student population, but also within the professors and administrators. We noticed that some administrators were not pleased with our efforts and that we were often seen as ‘just another group of student activists’. As it became more difficult to meet with SFU administrators to discuss our EPP thoughts with them, we decided to make a formal request to SFU’s Board of Governors to create an EPP Task Force so that we would have the appropriate forum to discuss this with the administration. In April 2003 the Board of Governors endorsed the students' motion. A multi stakeholder Task Force, chaired by SFU Vice President of Finance & Administration Pat Hibbitts, was given the job of making recommendations to the Board on the policy’s regulatory language and implementation.

Reflection #1: As NoSweat SFU sat down to reflect on our progress and our recent victory of our own SFU EPP Task Force, we reflected on our initial hypothesis that it was not only possible for public institutions to adopt EPPs, but that it could be rather simple to institute. We recognized that it was not a simple task, and that these initial steps in the first year to gain the attention and commitment of SFU’s administration towards EP Policy adoption required many smaller cycles of learning with constant research, planning, action, observation and reflection (which were not all documented), even though this was just setting the stage for a larger 3 year EPP project. Our focus was turned to Cycle #2.

5.1.2 Cycle #2 → EPP Task Force at SFU

Once the EPP Task Force was created, much more coordination on the part of the NoSweat SFU student research team, including the members of the new SFU EPP Task Force, was required.

Plan #2: Our new objectives stated that if our NoSweat SFU team presented information as clearly and as accurately as possible, an EP policy would be in place in 6 months at SFU.

Action #2: The Task Force convened on 3 occasions and NoSweat SFU heard for the first time some of the set backs that an administration would encounter if an EP policy was in place.

Observation #2: Although ideas and opinions on how to effectively achieve an EPP were quite different within the Task Force from the start, our individual values were found to be similar – we all agreed from the start that ILO and UN conventions should be upheld in Canada. Whether or not SFU could make a policy to uphold these conventions or how that could, or should, be implemented was of considerable disagreement.

Many concerns were raised on various topics, and each presentation that NoSweat SFU provided for the EPP Task Force to address these raised concerns did not sufficiently answer their questions. The Task Force members seemed ill prepared for each meeting and would bring forth new questions before we had an opportunity to address the initial concerns. Therefore, within the first year of operation, the SFU EPP Task Force became stalled with very real concerns about the “how-to” of Ethical Purchasing Policy adoption, and in particular its implementation.

The student group was requesting that SFU adopt an Ethical Purchasing Policy similar to McMaster University's EP policy as an initial step and then work out the implementation details. The EPP Task Force purchasing staff members were concerned about three issues with this proposal:

- 1) **Disclosure form:**
The SFU administration was a concerned that businesses would be reluctant to disclose their business information publicly and it may infringe on BC's Agreement on Internal Trade (AIT) and the Freedom of Information Act.
- 2) **Compliance structure:**
The SFU administration was a concerned that businesses would not be willing to sign a compliance form, and stated that it was already quite difficult to complete bidding processes within the current regulations. Businesses may choose not to bid for SFU contracts.
- 3) **Monitoring ability and costs:**
The SFU administration was a concerned that it would be impossible for SFU to monitor any policy violation cases, and any attempt at monitoring or investigations would seriously increase the costs of such a policy.

The administration's counter proposal was a voluntary code to solve these issues. NoSweat SFU then requested that Task Force members move away from their proposed policy position that would require only 'voluntary' supplier compliance believing that without supplier accountability, the policy would be mere public relations rhetoric.

Acknowledging the necessity to create policy through multi-stakeholder collaboration and agreement, SFU's VP Finance and EPP Chair Pat Hibbitts endorsed a workshop conference proposal put forward by the NoSweat SFU student group.

Reflection #2: Our NoSweat SFU assumptions were many in terms of how an EP policy could be adopted. We had not considered, or could not have considered, the realities of the purchasing staff. Purchasing staff must create a policy that is actionable, not solely based on principles or values, but also on its implementation ability. A question that was clearly raised in the meetings was "Why sign onto a policy if in practice it doesn't work?" Clearly, we needed more research to address these issues and to address them with others in the field. Our focus was turned to Cycle #3, the EPP Conference.

5.1.3 Cycle #3 → The Conference

Plan #3: Our new revised plan to address the questions raised in Cycle #2 was to put together a national multi-stakeholder conference titled "*Ethical Purchasing, Human Rights and Public Policy Initiatives*". The conference was geared to provide synopses and how-to workshops on the key elements of Ethical Purchasing Policy development, all of which was looked at through the lens of "lessons to be learned, challenges to be met, and opportunities to be had."

Our objective was revised once again, stating that if the Conference is held and our final Conference report is written to address each of the concerns raised at the SFU EPP Task Force meetings, an EPP policy at SFU will be approved within 2 months.

Action #3: For six months, NoSweat SFU organized this conference at a cost of \$24,000 funded primarily by SFU. Participants included representatives of businesses, governments, public institutions, unions, NGOs and citizens from across Canada. University administrators with EPP experience, legal experts and experts in Corporate Social Responsibility led workshops that addressed the challenges and solutions for implementing accountable Ethical Purchasing Policies at Canadian public institutions.

Observation #3: The conference was a great success, and we heard solutions to many of the issues and concerns raised by the Task Force; yet we were tired of trying to address other people's concerns as we felt that we were the only ones doing all of the work required to prove that an EPP would be possible at SFU – the reality was that we initiated this process and therefore it was our onus to prove that an EPP would work at SFU. We felt that the conference gave a green light for SFU to go ahead with a policy adoption, however the implementation aspect was still very unclear. What the conference provided was a clear intention to collaborate on a national EPP implementation strategy.

One major oversight on our part was the exclusion of suppliers at this conference. We had not considered their involvement which was a flaw in our plan, as this movement needed to hear from that part of the equation. It was an important lesson to be learned in this cycle.

Reflection #3: Upon the conference completion, NoSweat SFU reflected on its success to bring together multi-stakeholders, including the City of Vancouver. We felt that we had successfully addressed the Task Force's concerns and that no new timeline would be needed as we believed that an EPP policy at SFU would be approved within 2 months. Our focus was turned to Cycle #4 Policy adoption, The Task Force part 2.

5.1.4 Cycle #4 → Policy adoption, The Task Force part 2

Plan #4: After the conference, we felt that the Task Force would run more smoothly and efficiently. We were prepared to present our conference findings and move forward with an EP policy at SFU. We had high hopes that with a new policy at both SFU and City of Vancouver just around the corner, our ultimate research question, to see whether EPPs would hold corporations accountable could eventually be answered. (During this time, I was also a member of the City of Vancouver EPP Task Force as a representative from SFU).

Action #4: We gave 2 more presentations on the EPP Conference report findings to the Task Force. We continued to dialogue with the Task Force for another 18 months until finally on November 24th, 2005, SFU adopted their new EP Policy.

Observation #4: The Task Force did not move forward after our conference findings were presented and they came up with more questions and concerns that the NoSweat group felt had already been addressed at the EPP conference. NoSweat SFU thus became increasingly worried that SFU's administration had no intention of adopting an EPP. Even though we had addressed their concerns, the Task Force was still not prepared to

sign off. It became more and more clear that what was needed for SFU to move forward was a clear implementation plan, but since the national consortium idea based out of the University of Toronto had not yet gotten off the ground, SFU was worried about how it would implement a new EPP policy. When the SFU policy was finally approved it was divided into two parts: Part A EP Policy and Part B Implementation which will require a new EPP committee designed to guide the implementation process (see Appendix G).

Reflection #4: What became clear, in both Task Force experiences at SFU and at the City of Vancouver, was the need for collaborative team work and research when creating effective public policy. Had we simply told SFU or the City to pass an EP policy based on principles, that would only have gotten us so far; what we needed was to dialogue with SFU and the City to engage in their concerns and revise our plans to suit their needs. After all, it is their job to implement the plan once signed, not ours.

Action Research was an integral part of this process; without it, we would not have understood the need for an EPP Conference, nor the ability to compile the Conference or the Questionnaire results as outlined below in Sections 5.2 and 5.3.

5.2 EPP in Canada and Moving Forward in Common Ground

The following section summarizes the Conference participants' view on how Canadian businesses, organizations, and public institutions can move forward on a best practices model of Ethical Purchasing Policy creation and implementation in Canada.

Conference participants outlined three main areas in which to move EPPs forward:

1. Standardization
2. Collaboration
3. Education

Table 5.2: May 2004 EPP Conference Themes, Questions and Results

Themes:

- Corporate Social Responsibility, Ethics and Global Human Rights Issues
- Ethical Purchasing Policy Creation
- Legal questions for BC Universities/Post-Secondary Institutions in EPP creation and implementation
- Policy Compliance Implementation

Questions:

- What can we learn from past experience in this theme area?
- What are the challenges for developing an EPP?
- What are the opportunities imbedded in these challenges?
- How do we address these challenges? Who can help address these challenges and opportunities?
- How can we apply these lessons to post-secondary institutions in B.C.?
- What are the important recommendations that will help B.C. institutions develop an EPP?

Results:

- **Standardization** needs to be created for accountability and efficiency. A universal template with common language along with a single compliance form is needed that work with existing national and international organizations for the implementation, monitoring, and compliance components.
- **Collaboration:** Existing EP Policy and compliance forms were offered as templates for other public institutions (see Appendix F) leading towards a possible Inter-University Consortium that would utilize existing national and international monitoring bodies; this would centralized and reduce administrative and supplier costs. Increasing partnerships between Universities, Unions, and Organizations (both governmental and non-governmental), while joining with school boards, municipalities and other institutions with similar buying policies is good practice. To create an environment of trust is essential whereby sensitive business information that would need to be shared is used for the common good.
- **Education:** By working together in collaboration to address common issues towards standardization while universities increasingly educate on CSR issues in their curriculum, EPP may continue to grow as the next generation will be better informed.

5.2.1 STANDARDIZATION (of Policy & Implementation)

Standardization and accountability measures need to be created for any field that requires accountability, such as taxes, certification or building codes. There is a rising concern that if Ethical Purchasing Policies are not standardized, the confusion as to which policy is stronger or more efficient and how to monitor it will be problematic.

Conference participants called for a university and municipal template with common language. They also called for the development of a single compliance form as a vehicle for every institution to work from. The process would be much more effective if the policy's accountability structure worked with existing national and international organizations for the implementation, monitoring, and compliance components.

Possible solutions to achieve Standardization included:

a) A WRC / FLA⁹¹ consortium in Canada.

Kyle Winters, Marketing director for the University of Toronto, and Donna Shapiro, Bookstore manager for McMaster University, expressed the need to write a proposal for a WRC/FLA Canadian based national consortium. Such a partnership would allow for a list of suppliers to be posted on a national scale, reducing duplication and costs to individual institutions, while facilitating public disclosure (A Canadian based WRC / FLA proposal was presented by Kyle Winters & adopted in January 2006)

b) An EPP template.

Included in the EPP Conference report is a policy template (see Appendix D & G) which has been approved by Oxfam, the Maquila Solidarity Network, McMaster and University of Toronto. It is based on the McMaster policy and the MSN model policy.

c) Compliance and Disclosure forms

Included in the EPP Conference report are Compliance and Disclosure forms (see Appendix F) from the University of Toronto and McMaster. These forms have been effective at both institutions.

⁹¹ See List of Acronyms and Abbreviations

d) Addressing Legal Concerns

Included in the EPP Conference report is a legal report (see Appendix E) which addresses key concerns for institutions planning to adopt an EPP (such as NAFTA, FOIPOP and the Agreement of Internal Trade (AIT)).

5.2.2 COLLABORATION

Ethical buying codes can contribute to important improvements in both social and environmental outcomes. Of particular importance for conference participants was to create an environment of trust whereby sensitive business information that would need to be shared is used for the common good. As an example, both Kyle Winters, Marketing director for the University of Toronto, and Donna Shapiro, Bookstore manager for McMaster University, have offered their institutions' compliance forms as templates for other public institutions. In order to be collaborative, suppliers should also be included in the dialogue, and partnerships between Universities, Unions, and Organizations (both governmental and non-governmental) should be increased.

Caution was raised by participants who stated that an EPP initiative must be flexible in order to give the variety of players time to respond to the changes. Institutions should respect vendors' modes of doing business and the focus should be on rewarding positive actions rather than on punishing the negative when conducting reviews and addressing non-compliance.

With these points in mind, key Canadian EPP players including Don Wells and Kyle Winters (leaders of EPP at both McMaster and University of Toronto), and the Maquila Solidarity Network all suggest that as more universities develop Ethical Purchasing Policies it will be logical to create an Inter-University Consortium as a common purchasing body built around a standard Ethical Purchasing Policy. This would

give universities more collective influence to work with suppliers and it would also be strategic for universities to join with school boards, municipalities and other institutions with similar buying policies to promote an even broader-base and a more powerful consortium.

Possible solutions to achieve Collaboration:

a) Public Stakeholders

In order to promote a shift towards EPP's, there needs to be collaboration between public stakeholders.

b) Organizations⁹²

The Workers Rights Consortium (WRC), the International Labour Organization (ILO), the Fair Labour Organization (FLO), the Canadian Association of University Business Officers (CAUBO), Canadian Federation of Students (CFS), Association of Universities and Colleges of Canada (AUCC), were all mentioned as possible allies in EPP collaboration.

c) Suppliers

No suppliers were at the conference; having suppliers at the conference would have allowed for a more inclusive collaboration. The suggestion was made that if EPP is to be successfully implemented, suppliers must also be at the table working to move this process forward.

5.2.3 EDUCATION

When new ideas present themselves in organizations, a level of understanding and education is required before members can engage with them. Without a clear understanding, general principles may be present but how those principles relate to specific knowledge and outcomes can be vague at best and can lead to poor implementation practices.

⁹² See List of Acronyms and Abbreviations

The conference participants called for more education on the issues of Ethical Purchasing, Fair Trade, NoSweat and Corporate Social Responsibility. They called for more access to educational resources and indicated a need for broad based education campaigns in order to help develop a common understanding and terminology across sectors. They also came to believe that by building on existing national and international policies and organizations, a stronger EPP system can be produced here in Canada.

A resonating theme of the conference was public education. With a continued effort to educate multi-stakeholders as well as consumers on these issues, it is believed that education will play a strong role in the success of Ethical Purchasing Policies.

5.3 Outcomes of EPP generated by the Conference – Questionnaire

The 17 questions in the Questionnaire were selected carefully from NoSweat SFU's Action Research 'cycles of learning' – plans, actions, observations and reflections – as issues were raised over the three year process. The following section is the results from the Questionnaire (also see Table 5.3).

Looking back as to why the EPP initiative started, all parties noticed an increase in awareness of CSR issues within their institutions, but the opportunity to create EPPs was mainly brought forward by student activity working with their own institution's Board of Governors / City Councillors first to advocate and gain acceptance for such a policy, and then work with administrative staff. It was noted that the process worked best when a collaborative approach took place between the many stakeholders – students, organizations, administrations (purchasing managers in particular), and suppliers – working together to find common and actionable solutions.

As a starting point, it was fortuitous that all stakeholders agreed that upholding UN and ILO conventions was important. Since there are many different points of views as to how to move forward, as well as particular procedures for purchasers, it was best to involve as many stakeholders as early as possible in the process. Furthermore, collaborative working relationships enabled official Task Forces to be created within the institutions which gave the EPP initiative political and organizational legitimacy.

Working collaboratively also assisted each institution to narrow the scope of their EPP down to clothing, logoed items and Fair Trade certified products as the intent was to create an actionable system rather than bogging down the policy on a larger list of issues; these products have the best opportunity to effect change as actual monitoring (ie: FLA / WRC) and required resources are available to achieve the EPP goals.

It was noted however that there is often a lot of misinformation or lack of trust on issues by all parties. There are more than one set of agendas – unions, activists, administrations, suppliers – which need to be debated to identify what the deliverables truly are. As mentioned above, fortunately the UN and ILO conventions were accepted as a starting point as well as a collaborative multi-stakeholders approach to get buy-in from all sides, particularly if the people implementing the policy are at the forefront of developing the policy – in this way their concerns are heard, they are somewhat comfortable with the end product and they understand what their role is in implementing the code. It was also mentioned that once the Policy is mandated, institutions should expect reports back on the progress to allow the professional administrators do their jobs within the scope of the policy.

It was noted that where the process can fail is when stakeholders become prescriptive as to how policies should work, or when activist or unions threaten administrations with protests to force policy compliance or adoption.

Compliance mechanisms within the respondent's institutions are mainly complaint based – if a complaint is lodged against a vendor it is up to the vendor to investigate the complaint, take any steps necessary to follow up, take remedial action specific to any complaint, and respond to the institution's EPP satisfaction. The Code of Conduct in each of the respondent's policies requires the disclosure of the factory name, location, and contact info. The supplier also signs off to say that to the best of their knowledge the factory where they source their goods is operating in an ethical fashion based on UN and ILO conventions. However, this is only expected for tier 1 suppliers as it is currently too difficult to go all the way down the supply chain. If the institution is not satisfied after a reasonable time, contract cancellation is an option, but always as last resort.

The supplier community was sometimes seen as reluctant to share factory information as some felt that there are some competitive advantages to keeping this information away from their competitors. In the end, major retailers now disclose the information as withholding is now often viewed as having something to hide from customers.

It was also noted that it would be more effective if the specific factories were in fact being inspected. However this is a very costly process and one that most public institutions could not afford. Joining the FLA or WRC would give increased access to a monitoring process & compliance status but they are both limited in their ability to

follow-up on complaints and be proactive in investigating factories. Hiring a third party audit organization, like Verite, was also mentioned as a possible solution. It was also noted by all respondents that in the short timeframes since the EPP's implementation, there have been no complaints raised, and therefore no chance to test the compliance mechanism.

Supplier response to the policy has also been positive; they are watching the market carefully and know that they may lose revenues if they are found to be a bad actor; they know how to make money and what it takes to be competitive. With that said, it was noted that voluntary codes are inherently weak. Alternatively, Fair Trade certified products were noted as great examples of success because the end product is already certified – no need to collect information or do investigations because the process for ethical procurement has already been verified. With certified Fair Trade products, purchasing agents, administrators and managers simply need to place an order, and the compliance and monitoring is already taken care of to the best of its ability.

It was mentioned that buying items in tandem with other institutions is sometimes a possibility, however specific orders – such as logoed items – are mainly individualized. It was also noted that where other institutional operations do not have EPPs, they generally have no interest in participating or raising the bar in terms of performance related to the EP Policy. A Canadian based EPP consortium could however potentially improve the buying power with EPP mandates of smaller institutions within Canada, especially where the same vendors are already used to source products.

Having information collected in one national location and shared with the consortium was also mentioned as a possibility for improving EPPs and it would save on

duplication of effort. Nationally, the University of Toronto is setting up a vendor registry for campuses that have joined either the FLA or WRC. This would allow vendors to sign the EPP declaration once rather than signing each individual institutions policy.

In terms of local advisory committees, it was noted that they play a very important role: keeping the implementation momentum going as roadblocks are hit, researching other institutions practices, keeping all of the stakeholders up to date on EP issues on campus, and promoting EP practices.

It was clearly noted by all respondents that *standardization, collaboration* and *education* themes continue to be the central focus to move EPPs forward. However, EPP requires more players – a mass to keep it going. Trying to effect change through social policies such as an EPP, cannot be done off the side of one’s desk – it takes resources. EPPs are a relatively new area for people on all sides of the issue to get their heads around. By working together in collaboration to address common issues towards standardization – adopting common codes and implementation strategies – while universities are increasingly educating on CSR issues in their curriculum, it was noted that EPP may continue to grow as the next generation will be better informed.

Table 5.3: Outcomes of EPP generated by the Conference – Questionnaire

- ***EPPs began*** with an increased awareness of CSR issues & EPPs were brought forward by student activity working with their own institution's Board of Governors / City Councillors to gain EPP acceptance, and then work with administrative staff to implement.
- ***Standardization, Collaboration & Education*** themes continue to be the central focus to move EPPs forward.
- ***EPP Policy Implementation & Compliance***
 - The Code of Conduct requires *disclosure* of the factory name, location, and contact info up to tier 1 suppliers. Suppliers sign that to the best of their knowledge the factory supplying them is operating in an ethical fashion as outlined in the EPP.
 - Compliance mechanisms are currently complaint based – it is up to the vendor to investigate the complaint, follow up, take remedial action and respond to the institution's EPP satisfaction.
 - Contract cancellation is an option, but always a last resort.
 - Suppliers are no longer reluctant to share factory information as withholding is often viewed as having something to hide from customers.
 - Inspection is costly; joining the FLA or WRC would increase monitoring process & compliance status, but both are limited in their ability. Hiring a third party audit organization, like Verite, is a possible solution.
 - Administrative reports on EP Policy's progress should be mandated.
 - Local advisory committees: keep implementation on track, research best practices, keep stakeholders up to date on EP issues, promote EP practices.
- ***Successes and Failures***
 - Supplier response to EPPs has been positive; they want to be a good player.
 - Fair Trade certified products are great examples as the end product is already certified.
 - A Canadian based EPP consortium increases buying power with EPP mandates of smaller institutions within Canada where same vendors are used to source products; it would also save on duplication of effort.
 - With more than one set of agendas – unions, activists, administrations, suppliers – misinformation or lack of trust on issues exist. Identifying what the deliverables truly are is essential.
 - EPPs fail when stakeholders become prescriptive in policy development and implementation, or when activist or unions threaten administrations with protests to force policy compliance or adoption.
 - Voluntary codes are inherently weak.

6 DISCUSSION

6.1 The Conference and EPP in Canada

The participants of the May 2004 conference raised the following five themes, concerns and potential challenges in detail.

6.1.1 Finding common ground

Finding common ground between local and global Ethical Purchasing initiatives is imperative. Today, almost three hundred U.S. universities have No Sweat policies. Over the course of the late 1990s and early 2000s, some 10 Canadian Universities have adopted Ethical Purchasing or “No Sweat” policies. They are: Alberta, Dalhousie, Guelph, Laurentian, McMaster, Memorial, Toronto, Trent, Waterloo, and Western. Campaigns are underway at UBC, Carleton, King’s College, McGill, Queen’s, Simon Fraser, Winnipeg, Ottawa and York.

6.1.2 Spreading Beyond Universities

These policies are also spreading beyond universities as Canadian school boards and municipalities begin to pass resolutions to adopt Ethical Purchasing Policies. Cities like Toronto, Vancouver and Saskatoon are following on the heels of many US school boards and cities. With Ethical Purchasing Policy initiatives increasing in Canada through policy shifts in institutions, public awareness, consumer demand, non-governmental organizations, and growing product lines, opportunities for businesses that promote human rights and environmental standards are growing. Support for these businesses,

from public institutions, community organizations and consumers, will carry the momentum of ethical and sustainable business practices onto a new stage for local and global trade.

6.1.3 System of Accountability

The challenge for Canadian citizens, businesses and institutions is to devise a system of accountability that will set the parameters for a profitable corporation that remains accountable to its shareholders while acting responsibly towards citizens in Canada and elsewhere.⁹³ Ethical Purchasing Policies ensure that workers everywhere have the benefit of internationally recognized labour standards. These policies require suppliers to confirm that their goods are made in compliance with health and safety standards, such as limits on mandatory hours of work, abolition of forced and child labour, the provision of certain levels of workplace health and safety, and minimum wages.

6.1.4 Monitoring and Compliance

Monitoring and compliance are some of the challenges for Ethical Purchasing Policies. Canadian public institutions currently have little capacity to monitor workplaces to ensure code compliance. This process presents challenges for suppliers, in terms of their economic interests in privacy and competition, and challenges within public institutions in terms of the costs involved in verification of workplaces and investigations of policy violations.

⁹³ Alderson 2000

McMaster now requires suppliers to fill out a compliance form. In this form, names and addresses of workplaces that supply materials and trademarked goods become public information. For monitoring and enforcement in terms of policy compliance, McMaster became the first Canadian university to join the Worker Rights Consortium – a non-profit organization that does complaint-based monitoring of plants, discloses the locations of factories that university suppliers use, and publicizes code violations on their web site. Most US universities with No Sweat codes have joined the Fair Labor Association and/or the Worker Rights Consortium.

6.1.5 Significant Challenges

The promotion of Ethical Purchasing Policy creation and implementation for institutions across Canada poses some significant challenges over the next few years. Bringing transparency of human and environmental values into our products means increasing the amount of information a retailer needs to communicate to her consumers. Without a template or ‘best practices’ model to build a policy on, an organization would have to create its own language and structure in an Ethical Purchasing Policy. This presents economic risks, and confusion, for business suppliers and consumers.

Successfully making this economic shift will require the support and understanding of retail suppliers and consumers. This shift requires more information to be passed on from the suppliers to the consumers. Policies will need to be consistent so that suppliers as well as verification and monitoring agencies can adapt quickly to the needs of any Canadian organization that adopts an EPP. The language used needs to be simple, clear, and consistent enough so that retailers can pass this information off to consumers as a marketing tool rather than as a burden of information overload.

The amount of work, time, and money put into the creation of Ethical Purchasing Policies will be significantly higher if every business, organization, and public institution creates their own policy and implementation structure. Many organizations will neither have the capacity to do this nor the motivation to do the initial work if it is left up to individual initiatives. What is needed is a central system that monitors EPPs nationally.

6.2 Recent Developments

6.2.1 Municipalities Update:

On February 17, 2005 – after three months of drafting work by the City’s multi-stakeholder Ethical Purchasing Task Force and two months of revisions – Vancouver City Council adopted their new *Sustainable and Ethical Purchasing Policy and Supplier Code of Conduct* and became the first Canadian municipality to fully adopt a set of NoSweat standards for its purchasers. Phase I of the Policy covers City of Vancouver purchases of apparel and fair trade agricultural products such as coffee while leaving room to incorporate other Fair Trade certified agricultural products as they become available such as bananas, tea and chocolate. Phase II plans to incorporate broader environmental and social objectives into the policy. It not only contains a statement of values, but an actionable and comprehensive enforcement mechanism which many other policies lack making this EP policy the most comprehensive Ethical Purchasing Policy developed by any municipality in North America.

All City of Vancouver suppliers will be contractually bound to meet the standards outlined in the City’s Supplier Code of Conduct. These include adherence to the eight core labour conventions of the International Labour Organization and full disclosure of

factory and production facility locations of suppliers and subcontractors as well as independent facility inspections when the City chooses.

Not only was the City of Vancouver's update a large impact on this research as it facilitated the only source of data collection from a Canadian municipality to date, it is also a large impact on EPP in Canada as the City of Vancouver currently spends over \$1 million per year on apparel products. Furthermore, the City Council also directed its staff to forward their new Ethical Purchasing Policy and Supplier Code of Conduct to other municipalities across Canada, along with the Vancouver 2010 Olympic Committee.

In response, on March 8th, 2006, the Vancouver Parks Board also passed a motion to adopt an EP Policy and requested City Council to "establish the new task force for phase 2 of the project to prepare and present a Sustainable Purchasing Policy."⁹⁴

Across Canada there are also other Municipalities working towards Ethical Purchasing Policies. MSN reported in January 2006 that Calgary and Toronto are next in line as Calgary's City Council resolved to adopt a policy in September 2005, and has since commissioned a staff report on the costs of implementation. Toronto City Council approved a similar resolution in 2002 and on January 18, 2005 the City of Toronto held a public meeting to consult on the content and implementation of its own No Sweat purchasing policy. Finally on April 25, 2006, the City of Toronto – Canada's largest city which buys \$4 million in apparel annually – passed their Anti-Sweatshop resolution⁹⁵.

Furthermore, the Ottawa City Council unanimously passed the Ottawa No Sweat Coalition's resolution to bring an ethical procurement policy to Ottawa at the Council

⁹⁴ Vancouver Park's Board 2005

⁹⁵ http://www.sweatfree.org/release_MSN-4-25-06.shtml

meeting on Wednesday, May 10, 2006⁹⁶. These recent developments increase the capacity for future data collection and studies on EPP.

6.2.2 Provincial and Federal Governments

Although no province has yet adopted a No Sweat purchasing policy, a joint task force had been set up by provincial, federal and territorial Ministers of Public Works to produce a draft Ethical Procurement Policy and presented it to the Canadian Public Procurement Council meeting in September 2005. The task force was co-chaired by representatives of the Manitoba and Federal Governments.⁹⁷ The Maquila Solidarity Network monitored the work of the task force.

6.2.3 University of Toronto's new national EP initiative: "National University Retail Licensee List"

On January 27th 2005, the University of Toronto unveiled plans for a new national directory of university apparel suppliers who adhere to fair labour practices through its new National University Retail Licensee List – a public directory that will list manufacturers licensed to produce goods bearing the logos of Canadian universities. The consortium will be launched in September 2006 with the eight schools that have affiliated with either the FLA or the WRC. Under the plan, the University of Toronto would collect and share factory disclosure information with Canadian universities who adopt licensing codes of conduct consistent with the Fair Labor Association (FLA) or Worker Rights Consortium (WRC).

⁹⁶ <http://www.cbc.ca/canada/ottawa/story/2006/05/12/ot-sweatshop20060512.html>

⁹⁷ Maquila Solidarity Network

The University of Toronto is also urging Canadian universities to join the FLA and / or the WRC. The FLA is a multi-stakeholder code monitoring initiative that includes over 190 universities, brand-name companies and university suppliers. The WRC is a non-profit organization that investigates alleged labour rights violations in factories producing for approximately 135 universities.

To date, ten universities have adopted No Sweat policies. The Universities of McMaster, Guelph and Queen's are members of the WRC; the University of Alberta is a member of the FLA; and the University of Toronto is a member of both organizations.

MSN is encouraging schools to join both the FLA and WRC programs because each program provides the school with different advantages and provides maximum leverage with the companies. Many U.S. universities are members of both.

The FLA requires companies to report regularly on their progress in meeting the code standards, and will monitor compliance at larger licensees from time to time. The WRC provides full public disclosure of compliance information, which is important to establish the credibility of the school's program. The WRC also carries out investigations of complaints when called to do so, engaging local human and workers' rights organizations in their investigations. Each program has an annual fee of US\$1000 or 1% of licensing fees, whichever is larger. For Canadian schools, the \$1000 minimum will be the norm. With these new developments, Kyle Winters, Marketing Manager of the University of Toronto stated⁹⁸:

Ethical Purchasing will be good for public institutions. Imagine the pride when you can walk into any university and find out where the sweatshirts come from on a National list based on International UN and ILO

⁹⁸ Kyle Winters 2005, Conference speech at University of Toronto, <http://www.news.utoronto.ca/bin6/050127-904.asp>

Standards...a one stop shop for Canadians, increasing our leverage and ability to play in the game...Canada has a great opportunity and we are making great strides with FLA and WRC.

With university administrators from across the country at this January 2005 conference discussing cooperation among Canadian universities on the implementation of ethical licensing policies, Scott Nova, Executive Director of the Worker Rights Consortium stated that he is delighted that the University of Toronto is taking the lead in this effort⁹⁹:

By joining together, universities have demonstrated they can be a powerful catalyst for change in garment factories worldwide. The University of Toronto's new disclosure directory is a novel approach that will significantly aid the code of conduct enforcement effort.

Kathy Stevens, University Liaison of the Fair Labor Association stated that it is essential universities know that their apparel is made in proper working conditions¹⁰⁰:

Even though U of T's licensing revenues may be smaller than some of the larger U.S. universities, an institution of higher education has to be responsible for its place in the world.

The Maquila Solidarity Network also supports the initiative launched by the University of Toronto which is “really taking the lead in trying to ensure the clothing is made in good condition without a huge administration burden,” says Kevin Thomas, who helped draft the University of Toronto’s original code of conduct in 2000. “I think this initiative is quite positive because it allows smaller schools to take the same responsible steps bigger schools have without being marginalized because their budgets are smaller.”¹⁰¹

⁹⁹ Scott Nova 2005, Conference speech at University of Toronto, <http://www.news.utoronto.ca/bin6/050127-904.asp>

¹⁰⁰ Kathy Stevens '05, Conference speech at University of Toronto, <http://www.news.utoronto.ca/bin6/050127-904.asp>

¹⁰¹ Maquila Solidarity Network 2006

MSN believes that cooperation between universities in Canada on implementation of licensing codes of conduct will make implementation easier and less expensive for each individual university; make it easier to bring smaller schools into the fold; streamline the process of adopting a code and producing disclosure information; and increase leverage with companies to enforce No Sweat standards.

6.3 Corporate Social Accountability in EPP as evidenced in the Conference and the Questionnaire

As mentioned in section 5.3, the scope of EPPs in Canada is clothing, logoed items and Fair Trade certified products as the intent was to create an actionable system rather than bogging down on a larger list of issues; these products are where EPPs can most effectively effect change as actual monitoring (ie: FLA and WRC) and required resources are available to achieve the EPP goals.

Although the progress towards effective EPPs is taking longer than anticipated, increased collaboration toward a Canadian national EPP consortium is leading toward the potential of increased corporate social accountability. As public institutions procurement managers work more directly with corporations and their suppliers through a standardized EPP platform within a national consortium framework that centralizes the data and is better able to monitor compliance, assurance of EPP compliance can more easily be met. Furthermore, the consortium will be able to gather informative qualitative data to measure EPPs' impact in order to demonstrate if corporations are changing their practices and being held accountable to the EP policy. Currently, the only evidence of increased Corporate Social Accountability is in the dialogue across Canadian public institutions as EPP implementation and compliance modules are being planned.

The EPP consortium model has been presented by Kyle Winters, Marketing Director for the University of Toronto, to most Canadian Universities, colleges, CAUBO (Canadian Association of University Business Officers) and the Canadian Bookstore Association; according to Mr. Winters, it has received enthusiastic reviews from multi-stakeholders and therefore the University of Toronto plans to launch the consortium in September 2006 with the eight schools that have affiliated with either the FLA or the WRC. The required factory disclosure information has been consolidated onto one questionnaire that meets the criteria of both the FLA and the WRC. The challenge is the incremental approach to ensuring this model is manageable.

Standardization, collaboration and education have the opportunity to translate into effective monitoring and compliance capacities, in a methodical and reasonable manner. However, this process will take time, great communication and effort for all engaged in the work.

6.4 Action Research – A model for future research

Action research is often described as applied research with the core values of egalitarianism, participation, planning and taking action then reflecting and re-planning in an on-going cycle. This project was conceived as action research since a series of action were taken, evaluated, and revised and the cycle began again. In the beginning it was more informal than formal as the documentation was not systematic and was more in the nature of reflective practice. However as the project progressed the gathering of data became a greater priority. Further research on this topic – specifically the implementation of an EPP Canadian based national consortium – could gain immensely by utilizing an Action Research approach, thus involving directly into the research the

many stakeholders in the process. To capture the cycles of learning at this national stage would allow others interested in this topic the ability to recreate a similar approach for their own local EP policy initiatives within their own universities, municipalities and countries. The outcomes of such a research project could open the door for a better understanding of the practicality of EPPs in Canada and ultimately around the world. A documented research project of this magnitude could further guide institutions around the world towards upholding UN and ILO conventions through their purchasing policies.

This project contributes to the growing body of literature where action research is used to initiate and document organizational change and where participatory action research is used by grassroots organizations to address pressing problems in their communities.

7 SUMMARY AND CONCLUSIONS

Insufficient responsibility by corporations, where the social and environmental consequences of their practices permits abuse in the workplace is widespread – as reviewed in Section 2 “Literature Review and Background”. To prevent this, Canadian universities and municipalities have been developing EPPs, but considerable uncertainty existed as to how to initiate effective EPPs with corporate compliance.

Based on the Rational, this research project had 6 Specific Aims as outlined in Section 3.4. In order to achieve these aims this project utilized 1) an Action Research methodology 2) an EPP Conference and 3) an EPP Questionnaire as outlined in Section 4. These three methodologies, their outcomes and their results are summarized below, and in tables 5.1, 5.2 and 5.3.

Four cycles of Action Research to learn what questions could best be answered by experts engaged in EPP implementation guided the NoSweat SFU group’s research questions, resulting in the development of an EPP Task Force, the multi stakeholder EPP Conference in May 2004, and ultimately the adoption of an EPP at SFU.

The three day May 2004 EPP Conference titled “*Ethical Purchasing Policies, Human Rights and Public Policy Initiatives*” – designed as a result of the methodology of Action Research which discovered what questions could best be answered by experts engaged in EPP implementation – was organized around four theme areas (see Table 5.2 and Appendix D). The results of the Conference deliberations were analyzed into three

broad categories under the heading “EPP in Canada and Moving Forward in Common Ground” (see Table 5.3 and Appendix D).

Two years later, key participants from the conference were interviewed regarding the conference outcomes, including issues around ‘Standardization’, ‘Collaboration’ and ‘Education’ along with ‘Compliance’, ‘Implementation’ and ‘Accountability’ of corporations within an EPP framework.

Both the EPP Conference findings and the questionnaire respondents contributed to favourable outcomes of EPPs with specific solutions on how to move EPPs forward in Canada. It was concluded that with increased collaboration toward a Canadian national consortium through a standardized EP policy, implementation and compliance platform, assurance of compliance can more easily be met which would ultimately lead to the potential of increased Corporate Social Accountability.

EPP is an inspiring aspiration that is being worked towards but, as demonstrated in the research, there are several challenges. The relevant inexperience within the Canadian university and municipal communities in administering this type of challenge is a major set back, as well as the lack of standardized systems of monitoring and compliance which is made even more challenging by the costs associated with undertaking such an enterprise. However, the number of Canadian institutions implementing Ethical Purchasing Policies is growing.¹⁰² That this conference gathered the interest and grew to the size that it did reflects the interest and recognition of the need for economic change, not just in British Columbia, but nationally.

¹⁰² See section 6.1 Recent Developments

The Ethical Purchasing momentum in Canada is part of the growing awareness of the realities of global producers and agricultural workers, trans-national corporations, international policies, national governments, non-governmental community organizations, and the values of citizens and consumers worldwide – there is a shift in the global economy growing from the recognition that we need to acknowledge the true costs of production and consumption.¹⁰³ Recognizing the value of the social and environmental aspects of our production on an equal basis with our economic principles will ensure sustainable prosperity for future generations.¹⁰⁴

What is therefore needed is a continued action towards a Standardized EPP policy within a national EPP consortium with third party independently verified compliance monitoring to ensure Corporate Social Accountability through EPPs. As the saying goes, ‘What gets measured, gets done’.

In conclusion, it is recommend that Canadian universities and colleges join the University of Toronto’s National EPP Consortium that is débating in September 2006. This consortium will reduce the cost and the time spent by each university’s administration to develop individual policies and monitoring solutions. Individualizing EPPs has been the main reason why universities take such a long time to adopt EPPs, and in turn makes it more difficult to monitor as the standards vary. Simon Fraser University took 3 years to develop and adopt their own Ethical Purchasing Policy as the administration abided by responsible due diligence procedures. However, SFU’s administration asked many of the same time consuming questions that other institutions had already addressed – all which were addressed collaboratively in the May 7-8, 2004

¹⁰³ Cavanagh & Mander 2004; Hawken 2003; Abbey 2004

¹⁰⁴ *ibid*

EPP Conference. As a result of the Conference, the awareness of EPP policy *development, implementation* and *compliance* issues across Canada was increased and led towards common ground solutions aiding in the formation of the National EPP Consortium. Any university or college in Canada serious about adopting EPPs should join the University of Toronto's National EPP Consortium. Should any Canadian university choose to develop their own code without a practical monitoring model is little more than an administrative exercise.

Future research on this topic should investigate the effectiveness of this new National EPP Consortium. An interdisciplinary research project (business, sociology, economics and communications departments for example) utilizing the methodology of Action Research along with Organizational Change Management could best address the 'cycles of learning' as new opportunities for action arise in this dynamic field. There will be many new research questions to address once the monitoring and compliance components of the Consortium take effect. Examples include:

1. Is a centralized National EPP consortium able to uphold the original intentions of the NoSweat movement while addressing the barriers to compliance without the policy being watered down?
2. What are the stopping blocks for universities or colleges that choose to *not* join the National EPP Consortium?
3. Will WRC and FLA monitoring be effective and timely in responding to Canadian complaints?
4. Can the EP policy expand to other products besides apparel and logoed items, and Fair Trade certified products? Will monitoring be available or feasible if products are expanded?
5. Can the policy expand beyond tier 1 suppliers? If the supply chain is too long and accountability cannot be guaranteed, should shorter supply chains be requested? Should tier 2 and 3 suppliers be included?
6. Can municipalities or other public institutions join the Consortium model?
7. Does the Consortium model demonstrate corporate compliance? How?

In terms of municipalities, it is recommend that the Federation of Canadian Municipalities hold another meeting on this topic to determine how best to proceed. As more cities and municipalities continue to sign onto EPPs, it would be in their best interest to discuss how to move forward collaboratively with standardization in order to reduce costs and timely due diligence procedures as the university community has done; there may also be a future possibility of joining the National EPP Consortium to streamline this initiative. As Canada has already signed onto ILO conventions, adopting EPP policies and compliance measures would demonstrate accountable leadership to its citizens.

Through multi-stakeholder collaboration towards standardized policy, implementation and compliance monitoring, EPPs can further assist in redirecting corporations to serve new values, not solely as profit driven, but more as a human growth potential, taking into account all aspects of the economy: the social, environmental, and the economic.

In the end, Universities and Municipalities who adopt EPPs will be demonstrating leadership through this actionable policy. As the Secretary General of the United Nations believes through his creation of *the Global Compact*, addressing the social, environmental and economic initiatives within business practices is part of the global shift towards sustainable solutions. As more Canadian public institutions join the EPP initiative and become leaders in sustainability, this will allow future research to determine the effectiveness and impacts of Ethical Purchasing Policies.

APPENDICES

- A. EPP Motion to SFU Board of Governors – adopted April 23, 2003
- B. SFU’s EPP Task Force members
- C. SFU administration’s main EPP concerns addressed by NoSweat SFU
- D. The May 7-8, 2004 EPP Conference
 - a. The EPP Conference Brief
 - b. The EPP Conference Report
 - c. The EPP Conference Program
- E. EPP Legal Report
- F. Compliance & Disclosure Form Sample (McMaster)
- G. Sample of Canadian EPP Policies in Practice & MSN Model Template:
 - a. McMaster
 - b. University of Toronto
 - c. Simon Fraser University
 - d. City of Vancouver’s EPP, and the final version of Vancouver’s Supplier Code of Conduct
 - e. Maquila Solidarity Network Model Template:
- H. The EPP Questionnaire

APPENDIX A – EPP MOTION TO SFU BOARD OF GOVERNORS, ADOPTED APRIL 23RD, 2003

From: SFU Campus Community and the NoSweat Campaign

To: SFU Board of Governors

December 13, 2002

Dear members of the Simon Fraser University Board of Governors,

Over the past few months, many SFU campus community groups have come together to work with the Student led NoSweat campaign on developing support for a *NoSweat and Fair Trade* procurement policy at Simon Fraser. We have been consulting members of the administration, faculty, businesses and Interfaith Chaplains and working with organizations such as Oxfam Canada, Maquila Solidarity Network and the Canadian Labour Congress, as well as on campus workers' and student unions in a collaborative and productive fashion with the goal of having an ethical procurement policy adopted by the Board of Governors. As you will be aware, many American and Canadian Universities and other public bodies have recently made this institutional commitment to using purchasing power to support human rights and combat sweatshop abuses. We are writing to you today to suggest that a task force under the VP Finance be formed that would develop the detailed regulatory language and template contracts that will be necessary to implement such an ethical procurement policy for SFU. The task force, we suggest, should also turn its attention to procedures for monitoring compliance with such policy to guarantee that all goods supplied to or licensed by Simon Fraser University are manufactured under humane working conditions, and that their manufacturers abide by the International Labour Organization standards. In order to give this process transparency, we suggest a policy that requires suppliers and licensees to publically disclose the location of all manufacturing facilities and subcontractors. We believe that this proposal offers the University an opportunity to exercise world class leadership through its ability to engage in socially and environmentally responsible business practices.

We have enclosed the motion and a small information package for you. Please read our feature article in the Peak printed the week of October 28, 2002 as well as an article in the Courier in early October. We are also including the adopted McMaster "*No-Sweat Purchasing and Fair Trade Policy*" for your review, as a clear example of our goals towards a Sweat Free University (SFU).

Thank you for your time and consideration of this proposal. We look forward to working with you on this new policy initiative at Simon Fraser towards “*engaging all our communities in building a robust and ethical society*”.

Yours,

No-Sweat Campaign
SFU: Sweat Free University
no-sweat@sfu.ca

Motion:

Whereas Simon Fraser University is “*an open, inclusive university whose foundation is intellectual and academic freedom*”; and

Whereas the University is committed to “*engage all our communities in building a robust and ethical society*”;

Whereas it would be consistent with these values for all goods and services supplied to Simon Fraser University to be manufactured under humane working conditions, by contractors who abide by the International Labour Organization standards, and who publically disclose the location of all manufacturing facilities and for contracts with food retailers on campus to contain a requirement that such retailers be required to procure and sell only fairly traded coffee.

Therefore be it resolved that a task force, to be chaired by the VP Finance, be struck with the mandate to develop the regulatory language and template contract texts that will be necessary to implement an ethical procurement policy for the University. The composition of the task force shall include but not be limited to the VP Finance, other representatives of the administration, students from the NoSweat campaign and members from both the SFSS and CUPE local 3338. In addition, each of the following groups should be represented: Oxfam, Canadian Labour Congress, Maquila Solidarity Network and UNITE (Union of Needle Trades, Industrial and Textile Employees). The task force shall deliver to the Board of Governors a report detailing its recommended University code for SFU and the regulatory language to implement that code by the May 29th Board of Governors’ meeting.

APPENDIX B – SFU’S EPP TASK FORCE MEMBERS

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James Wood
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APPENDIX C – SFU ADMINISTRATION’S MAIN EPP CONCERNS ADDRESSED BY NOSWEAT SFU

SFU ETHICAL PURCHASING POLICY TASK FORCE MEETING – 11/20/03

RESPONSE FROM THE NO SWEAT WORKING GROUP

The following are discussion points we raise at today's meeting in response to the following documents:

- 1) SFU Purchasers/Task Force Members Draft Ethical Purchasing Policy (undated)
- 2) A list of 7 questions/issues given to No Sweat Working Group rep. James Wood by members of the Task Force outlining SFU Administrative concerns about an ethical purchasing policy (meeting date ? members present?)

NOTE:

Item #2 is accompanied by a number of supporting documents; titles are listed below.

SFU DRAFT ETHICAL PURCHASING POLICY

- The rationale for adoption of No Sweat policies by public institutions is to promote corporate responsibility and good labour practices in a globalized economy.
- The rationale for engaging the SFU Administration in the analysis and structuring of an ethical purchasing policy model is to acknowledge its responsibility as a leader in Canadian civil society to uphold Canada's commitment to international human rights conventions.
- The proposed "policy" maintains the status-quo of "self-regulation". In the area of global apparel manufacturing, to give one example, this status-quo continues to result in widespread human rights abuses.
- Reference to ILO principles of international labour standards does not address the cornerstone principles of ethical purchasing policy; namely the requirement for transparency and disclosure in the production chain of goods and services being purchased by SFU.

**SEVEN QUESTIONS/ISSUES REGARDING
A POTENTIAL SFU NO SWEAT POLICY**

1. *If a SFU purchasing policy includes a "Full Disclosure" clause, this could potentially invite litigation from suppliers since the bidding process would be perceived as "preferential". Further potential litigation would arise from policy language/conditions (such as a "full disclosure" clause) that were contrary to the procurement rules of Canadian Agreement on Internal Trade Annex (AIT Annex 502.4) which BC is a signatory to.*
 - With reference to Article F. (2) of the AIT Annex "Legitimate Objectives" (see page 3) parties signatory to the AIT may make exceptions to AIT measures based on several public policy objectives, including "protection of the health, safety and well-being of workers" amongst others
 - With reference to "non-discrimination" language of the AIT Annex, a requirement for a "full disclosure" clause would not be discriminatory if it applied to ALL bidders/suppliers
 - We recommend that the Administration avail itself of in-house legal counsel on this matter before rejecting the full disclosure concept.

2. *The Task Force members seek a distinction between "Policy" and "Law" where 'policy' can be seen as a set of self-guiding principles and 'law' giving rise to conditions and compliance issues that potentially invite litigation. (ie: language/conditions that are contrary to AIT Annex 502.4 rules).*
 - We have no evidence that any Canadian University with a No Sweat policy has been sued by its suppliers or by parties who were in competition for contracts.
 - All Ontario Universities which have No Sweat purchasing policies have been (as we understand it) party to the rules of the AIT since 1999 when Ontario signed on to the agreement.
 - We invite the Administration to research this question further with our assistance.

3. *Per annum SFU Administrative costs for policy enforcement, monitoring and due diligence are estimated at \$250,000 - \$300,000.*
 - We believe there can be a clear separation between policy adoption and the development/building of a compliance system or mechanism over time.

- Costs for policy administration can also be separated between the one-time and review costs of policy adoption/implementation and the per annum costs of monitoring and policy compliance. The current per annum cost of membership in the Workers Rights Consortium (WRC -the monitoring agency used by several Canadian Universities), for example, is \$1,000. Per yr. or 1% of gross licensing revenues (see page 2 of WRC support document).
 - We have no evidence that any Canadian University with a No Sweat policy is spending \$250,00. - \$300,000. Per yr. to monitor/enforce their supplier conditions.
4. *Would a potential SFU policy involve only apparel and Fair Trade coffee purchasing, as exemplified by the McMaster University model, or would the SFU policy apply to all suppliers of goods and services to the University?*
- In general we subscribe to the goal of a blanket policy for all SFU suppliers, but want to invite the Administration to undertake an ethical purchasing policy pilot project in the area of logoed apparel.
5. *Depth of channel: How far down the factory supply chain would a "disclosure clause" require a supplier to go? Example: If SFU contracts one company to logo shirts, they get their shirts from someone else, and those other people get the supplies from someone/somewhere else , etc.*
- We support full disclosure to the point of ASSEMBLY in the production chain.
6. *Can the No Sweat Working Group supply the Task Force with an example of a DISCLOSURE FORM?*
- A disclosure form model (available online) is included in the supporting documents package
 - The McMaster University disclosure form will be made available to Task Force members when it is released publically
7. *What costs will be applied to SFU Students in order to finance the potential policy where estimated costs are \$300,000. Per annum?*
- See answer 3. Above

APPENDIX D – THE MAY 7-8TH, 2004 EPP CONFERENCE

- a. Report Brief (next page)
- b. The Full Report is available on-line at:
http://www.criticalthoughts.ca/ep_reports.htm
- c. The EPP Conference Program:
<http://www.criticalthoughts.ca/nosweat/conference.html>

Ethical Purchasing:

The implementation and application of Ethical Purchasing Policies for Canadian Post Secondary and Public Institutions.

On May 7 and 8 of 2004, NoSweat SFU hosted a conference on “Ethical Purchasing, Human Rights, and Public Policy Initiatives at B.C. Post Secondary institutions”. This conference provided a national forum that addressed some of the major questions arising from Ethical Purchasing Policy adoption. Stakeholders from across BC came to discuss their views with experts from other Canadian universities outside BC that have already implemented Ethical Purchasing Policies at their institutions.

Over 100 participants from across Canada participated, including representatives from Simon Fraser University, University of Victoria, McMaster University, University of Toronto, City of Vancouver, BCIT, VanCity, Mountain Equipment Coop, BC Teachers Federation, BCGEU, BC Professional Firefighters Association, UNITE, Canadian Labour Congress, Canadian Federation of Students, TSSU, Oxfam, Maquila Solidarity Network, Vancouver Fair Trade Coffee Network, Simon Fraser Public Interest Research Group, and the Simon Fraser Student Society,

Our goal is to work with multi-stakeholders through our research and open dialogue approach towards standardized Ethical Purchasing Policies and compliance measures in Canadian Universities and Municipalities. Our vision of holding business practices accountable to United Nations (UN) and International Labour Organization (ILO) Conventions while producing products for our University and Municipal communities will be empowered through standardized policies and compliance measures.”

NoSweat SFU, <http://www.criticalthoughts.ca/NoSweat.htm>

This report is being written to promote collaboration between the stakeholders who have a vested interest in Ethical Purchasing Policies, to promote mutual understanding, and to create an environment of trust.

It will address the questions, concerns, problems, ideas and solutions concerning the creation and implementation of Ethical Purchasing Policies raised at the May conference. The report will address questions about ethical purchasing policy creation and implementation, focus on the common ground covered at the May Conference, and function as a point of organization for collaboration on the advancement of a national standardization plan.



To continue the research and open dialogue, this report is being written and scheduled for release in the Fall of 2004.

REPORT OUTLINE

1. ETHICAL PURCHASING 101

What are ethical purchasing policies, and why should we have them?

2. ETHICAL PURCHASING IN CANADA

What's happening in Canadian Universities and Businesses.

3. MOVING EP FORWARD:

Conference Summary and follow-up research.

4. COLLABORATION

Exploring common ground and collaborative initiatives.

5. POLICY TEMPLATES & COMPLIANCE FORMS

Ethical Purchasing:

The implementation and application of Ethical Purchasing Policies for Canadian Post Secondary and Public Institutions.

KEY POINTS FROM THE CONFERENCE

Participants in the conference took part in discussion groups that discussed the following topics: Ethical Purchasing Policy Creation, Legal Issues, Compliance, and Corporate Social Responsibility. The following points are the common themes and ideas that came out of these workshops:

COLLABORATION

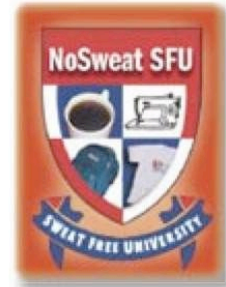
- Create an environment of trust.
- Bring everyone, including suppliers, into the dialogue.
- Promote partnerships between universities, unions, organizations (CFS, CAUBO, AUCC, WRC, ILO, FLO)
- Non conflictive or competitive
- Flexibility - give people time to respond to change.
- Pursue attainable, incremental goals and develop a sustainable long term plan.
- Reward the positive rather than penalize the negative.
- Respect vendors' modes of doing business.

EDUCATION

- Need for broad based education campaigns.
- Consumer education - consumer choice will make the difference.
- The creation of a brand for products that meet policy standards.
- Improve access to educational resources.
- These issues should be addressed more critically in high school and university curriculums.
- Develop common terminology for ethical purchasing, fair trade, corporate social responsibility.
- Educate about and build on existing foundations - national and international policies & organizations.

STANDARDIZATION

- Consistency of protocol, policy, and forms.
- Create policy templates.
- Develop a single compliance form as a vehicle that everybody could work from.
- Work with existing national and international organizations for the implementation, monitoring, and compliance of Ethical Purchasing Policies.
- Publish a list of supporters.
- Enable information to flow without any conflicts of interest.



There are different pathways to change and this conference got us to the point where we have a shared vision. The well balanced and representative group of participants brought unique tools to move the Ethical Purchasing vision forward. It is the right time to move on these issues; the key is to keep the momentum and the cooperative spirit of the conference going.

*Pat Hibbits,
VP SFU Finance and Administration*

Visit: http://www.criticalthoughts.ca/projects_ethical_purchasing_reports.htm for updates on this report.

APPENDIX E – EPP LEGAL REPORT

ETHICAL PURCHASING, HUMAN RIGHTS AND PUBLIC POLICY INITIATIVES AT BC POST- SECONDARY INSTITUTIONS

Simon Fraser University Harbour Centre, Vancouver, BC
May 7-8, 2004

**THINKING OF IMPLEMENTING AN ETHICAL PURCHASING POLICY?
IT CAN BE DONE – NO SWEAT**

Leo McGrady Q.C. & Sarbjit S. Deepak
McGrady, Baugh & Whyte
Vancouver, BC

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Public institutions, particularly universities, across British Columbia have come under constant pressure to implement ethical procurement policies that reflect the International Labour Organization’s (the “ILO”) commitment towards the promotion of social justice and internationally recognized human and labour rights.¹ So far, ten universities across Canada have adopted ethical procurement policies.² However, currently no university in British Columbia has implemented such a policy.

¹ For more information about the ILO, see the ILO’s website at <http://www.ilo.org/>

² For a list of the Canadian universities that have adopted ethical procurement policies, see <http://www.maquilasolidarity.org/nosweat/universities/index.htm>

The ethical procurement policies adopted by the ten Canadian universities generally recognize that the universities wish to do business only with suppliers and their subcontractors that pay employees a dignified living wage, have humane working conditions and hours of work for employees, do not use child labour, do not use forced labour, provide safe and healthy working environments, do not allow discrimination and harassment, and those that recognize the rights of workers to organize and bargain collectively. As Canada is a member of the ILO, along with 176 other countries, it is a laudable objective for Canadian universities to promote and abide by international standards accepted by the ILO.

However, the lack of ethical procurement policies in British Columbia does not necessarily reflect disagreement with the objective of such a policy; the main concern appears to be over the practical implementation. There are three common arguments against the implementation of ethical procurement policies:

- (i) such policies will increase costs;
- (ii) they will be difficult to administer; and
- (iii) they will leave an institution open to increased legal liability.

This paper focuses on some of the more commonly raised concerns over issues of legal liability flowing from the implementation of an ethical procurement policy. In passing, we will touch upon several of the other concerns mentioned as well.

In this paper, we will address the following:

competitive bidding

- (a) the relevant British Columbia competitive bidding/tendering laws that would apply to a university if it were to adopt an ethical procurement policy;

pre-compliance

- (b) the legal obligations placed on a university in the course of considering a potential supplier for a contract, such as obligations regarding ensuring pre-compliance;

due diligence requirements

- (c) the level of due diligence a university would have to undertake in order to protect itself from legal liability;

defamation

- (d) the issue of potential defamation claims against a university by suppliers if the university reports on a supplier's violation of its ethical procurement policy;

privacy considerations

- (e) the relevant privacy laws that would apply to a university if it were to adopt an ethical purchasing policy;

international trade agreements

- (f) the North American Free Trade Agreement (“NAFTA”), the World Trade Organization Agreement on Government Procurement (“WTO-AGP”), and the Agreement on Internal Trade (“AIT”); and

ILO conventions

- (g) whether a British Columbia university has a legal obligation to comply with International Conventions to which Canada is a signatory, such as the ILO Conventions.

We will deal with these issues and provide some practical suggestions for universities to implement ethical procurement policies, while limiting their legal liability.

It should be emphasized that the information in this paper is of general nature, and is intended to offer a series of guidelines. It will not answer every question that may arise from the questions already posed, and it may not apply in every case. We have written about the law as it applies to universities in British Columbia. It is important to note as well that the information in this paper should not be relied upon in any legal proceeding, as it is not a replacement for proper legal advice given for the purposes of specific concerns that may arise for each institution.

Competitive Bidding Laws

As most universities in British Columbia are reliant on public funds, they have adopted policies that entitle suppliers to bid for goods and services that universities require. The implementation of an ethical procurement policy does not in any way change the laws that govern competitive bidding in British Columbia. As we will discuss further below, the AIT applies to universities as well when they procure goods and services, but it should not in any way hinder a university’s ability to adopt an ethical policy.

The Supreme Court of Canada in *Ontario v. Ron Engineering & Construction (Eastern) Ltd.*, [1981] 1 S.C.R. 111, introduced the tendering laws in Canada that apply today. The courts in British Columbia have consistently followed the legal approach espoused in *Ron Engineering, supra*.

In the model adopted by the Supreme Court of Canada, there are two contracts. For example, a university’s invitation to tender will constitute an offer to potential bidders. Contract “A” comes into existence when a contractor submits a compliant tender in response to the university’s offer. The terms and conditions of contract “A” are governed by the terms and conditions of the call for tenders. If a university accepts a bid, there is an obligation on both parties to enter into a substantive contract, or contract “B”.

The law requires the owner, in this case the university, to treat all bidders fairly and objectively, and the awarding of the contract must be consistent with the call for tenders. Otherwise, a university may be held liable for damages (i.e. breach of contract "A"). As with any invitation to tender by a university, if an ethical procurement policy is implemented, the university would have to clearly outline the criteria it intends to use to evaluate and select tenders.

The courts in British Columbia have upheld breach of contract claims made by unsuccessful bidders where not all of the selection criteria have been disclosed in the invitation to tender documents: *Chinook Aggregates Ltd. v. Abbotsford (District)*, [1989] B.C.J. No. 2045 (Q.L.) (C.A.), and *Tercon Contractors Ltd. v. British Columbia*, [1993] B.C.J. No. 911 (Q.L.) (S.C.).

"Pre-Compliance" and the Legal Obligations on a University

In evaluating potential suppliers, a significant concern for a university would rightly be whether a bid is in compliance with the university's ethical procurement policy. If an invitation to tender simply states that all bids have to be in compliance with a university's ethical procurement policy, this may, in turn, place legal obligations on the university to verify the accuracy of the information received by it from bidders to determine if, in fact, bids are compliant. If a university awards a contract to a non-compliant bid, it may open the university to a legal challenge by unsuccessful bidders that the successful bid was non-compliant.

A legal obligation placed on a university in its call for tenders is that it must select a bid according to the process and criteria it established in the invitation to tender. Even where an invitation to tender document has a privilege or discretion clause it may leave a university open to a claim for damages. Typically, call for tenders include language that suggests that the owner may reject all tenders or accept a tender which is not the lowest bid. Court cases show that the discretion is not untrammelled. A university may not use its discretion clause to justify accepting a non-compliant bid. In *Graham Industrial Services Ltd. v. Greater Vancouver Water District*, 2004 BCCA 5, the Court stated:

The [Owner's] right to rely on the Discretion Clause as a term of Contract A only arises if a valid Contract A is formed. Contract A is only formed if a bid is, in Estey J.'s words, 'capable of acceptance in law'. It is the submission of a compliant tender which establishes the legal relationship, Contract A, between the parties: *Sound Contracting Ltd. v. Nanaimo (City)* (2000), 74 B.C.L.R. (3d) 239 (C.A.) [paragraph] 18. Since the Discretion Clause does not operate before Contract A is formed, the determination of whether a bid is capable of acceptance in law must be based on an objective standard.

Limiting obligations and liability regarding pre-compliance

A way to limit a university's obligations, potential liability for damage claims from unsuccessful bidders, and save costs in evaluating bids would be to develop clear objective selection criteria in its invitation to tender. In this respect, a university may simply place the onus on bidders to ensure that they are in compliance with the university's procurement policy.

The McMaster University ethical procurement policy³ (the "McMaster Policy") has a provision that states, at section IV(A):

The University Supplier shall submit a completed confirmation of compliance form in order for the University to consider entering a relationship with that supplier. Furthermore, the University Supplier shall ensure that its Subcontractors comply with this Code by having each Subcontractor complete this form as well.

The onus may be placed on the bidder to ensure compliance with a university's ethical policy at this stage. Any call for tenders should clearly state that the university will not be verifying the accuracy of the assurances at this stage and that the bid will be deemed to be in compliance with the ethical procurement policy if the assurances are given.

For many, including ourselves, this "honour system" may not appear to be effective in promoting any real change. We all know many companies are not very honest when reporting on themselves. However, as the Maquila Solidarity Network⁴ provides in their various guides to winning and enforcing anti-sweatshop purchasing policies, few, if any, factories are completely free of violations. Suppliers should be given time to correct any violations if they are found.

The above approach may be considered to be "self-regulating" in the initial stage of the tendering process; however, for the selected bid, a university may take a more rigorous approach by implementing a stringent monitoring mechanism and adopting a strict approach regarding violations of the policy. This may include public reporting of the accepted bidder's continued compliance or non-compliance with the university's policy.⁵ However, in order to take such measures, the invitation to tender must clearly indicate

³ The McMaster University Code of Labour Practices for University Suppliers and Licences can be found at the following website: <http://www.mcmaster.ca/policy/labour.pdf>

⁴ See <http://www.maquilasolidarity.org> for an excellent overview of campaigns across Canada, their successes and continued work in having ethical procurement policies implemented in various institutions. As well, this site provides some good strategic advice regarding campaigning for ethical policies. The Maquila Solidarity Network's "A Guide to Winning and Enforcing Anti-Sweatshop Purchasing Policies" for cities and schools is an invaluable resource.

⁵ Further below, we address British Columbia privacy laws and how they may limit a university from publicly disclosing information and ways to avoid any breach.

that the university intends to take such measures with the selected bidder, and that the bidders must agree to such measures if selected.

Further, the language in the tendering documents should clearly state the consequences for an accepted bidder if the university determines that an accepted bidder is in violation of the university's ethical procurement policy and that the successful bidder must agree to those terms. This should include strong language that the university may terminate the contract, at its sole discretion without any penalty or recourse, if that is what the university intends to do.⁶

Of course, existing suppliers may be encouraged to comply with the ethical procurement policy, but it will likely be a breach of contract to cancel any existing contracts if suppliers do not comply.

Due Diligence

The level of due diligence required to ensure compliance with an ethical purchasing policy depends on what the university undertakes in the policy. A completely "self-regulating" policy may be meaningless, whereas a more rigorous monitoring policy is obviously more effective.

Defamation

Defamation is a tort or a civil wrong. It is designed to protect a person's reputation from falsehoods, whether these falsehoods are expressed in a more permanent form such as in writing (libel) or in a more fleeting form such as in a spoken conversation (slander). Defamation actions are not limited to individual individuals. A corporation, as a legal person, may also bring a defamation action: *Bank of British Columbia v. Canadian Broadcasting Corp.*, [1992] B.C.J. No. 216 (Q.L.) (C.A.); leave to appeal dismissed on August 27, 1992, [1992] S.C.C.A. No. 150 (Q.L.).

Generally speaking, a publication is defamatory if it tends so to harm the reputation of another as to lower the person in the estimation of the community, or deter third persons from associating or dealing with the person: *M.D. Mineralsearch Inc. v. East Kootenay Newspapers Ltd.*, 2002 BCCA 42.

Without going through the intricacies on the law of defamation and its defences, such as qualified privilege, fair comment, etc., there is no question that if the university takes on public reporting requirements itself, there is always a risk that the university may be sued for defamation - whether or not the claim will succeed is another matter.

⁶ Without language that states that a contract may be terminated if a supplier violates the ethical procurement policy, it may be that the courts will not consider a violation of an ethical procurement policy as a "fundamental breach" that requires the repudiation of the whole contract. The test for a fundamental breach is that the breach must go to the root of the contract. It must deprive the innocent party of substantially the whole benefit which that party was to obtain under the contract: See *Poole v. Tomenson Saunders Whitehead Ltd.* (1987), 16 B.C.L.R. (2d) 349.

The issue is a real one, as the law of defamation in Canada is amongst the most conservative in the western world. It often appears to place issues of reputation above matters of freedom of expression. The problems can be compounded when the issue involves the expense and logistics of calling witnesses from distant countries, and having them testify in proceedings in a legal system foreign to them, and perhaps in a different language.

One way to limit the university's liability against defamation claims is to put the onus of establishing compliance, and meeting the reporting requirements, on the supplier. It should be the supplier's responsibility to prove that it is in compliance with the university's ethical procurement policy. A simple strategy may be the following:

- require the supplier to use an acceptable third-party verifier to investigate and report;
- require the supplier to set up a website where all third-party reports should be published;
- the university can simply have a link on its website to the supplier's website.

The above strategy may protect the university from a claim of defamation – at least from a supplier. A subcontractor still may possibly make a defamation claim that the supplier and university published the defamatory words (the university via the link on its website). However, the success of such a claim is unclear, as the law regarding internet defamation is still evolving.

In *Carter v. B.C. Federation of Foster Parents Assn.*, 2004 BCSC 137, it was argued by the plaintiff that by merely informing others by forwarding a newsletter that makes reference to a website (without reference or knowledge of its contents) constitutes the publication of defamatory words contained in the referred website (chat forum). The Court in *Carter, supra*, cited two New York cases. One of the cases, a New York Court of Appeal decision in *Kline v. Biben*, 296 N.Y. 638 (N.Y. Ct. App. 1946), held that the simple mention of an article that contained defamatory comments without reference to the comments could not amount to a republication of the defamatory comments. After citing the New York cases, the Court stated that what occurred in the case before it was even more remote "as reference was made to a website that contained all manner of participants' comments including the [alleged defamatory] comment." The Court stated that it was supported in its view because the Defendants had no knowledge of the offending comments contained in the website itself. The Court found that the defendant was not liable for publication of the website link as there was nothing to suggest that the Federation knew or ought to have known of the alleged libelous material contained in the forum.

In any event, consent is always a complete defence to a claim of defamation. The university may simply obtain the suppliers' and their subcontractors' consent to publish any third party verifier reports: *Hanly v. Pisces Productions Inc.*, [1980] B.C.J. No. 1803 (Q.L.) (S.C.).

It would appear as well that the other three main defamation defences would be available in many circumstances: truth/justification, qualified privilege, and fair comment.

It is important to emphasize that the university should set out clearly the terms of its ethical procurement policy in the invitation to tender regarding reporting requirements.

Privacy Laws

The most relevant privacy statute that applies to universities in British Columbia is the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 (the "FOI/POPA").

Under section 21 of the *FOI/POPA*, a university may potentially be in breach of privacy rights if it discloses publicly the trade secrets of a third party or commercial, financial, labour relations, scientific or technical information of or about a third party if the information is supplied in confidence and it would result in, generally, harm or improper benefit. There is a risk in a university deciding to publish information about its suppliers, as it may trigger the application of the *FOI/POPA*.

However, under section 25, it is mandatory for the university to disclose, whether or not a request is made for access, without delay, "to the public, to an affected group of people or to an applicant, information"

- (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
- (b) the disclosure of which is, for any other reason, clearly in the public interest.

Section 25 applies despite any other provision in the *FOI/POPA*. Depending on the circumstances, a university may argue that it was required to disclose certain information.

It should be noted that the section has been interpreted very narrowly. A duty arises under section 25 only in the clearest and most serious of situations. The risk must be imminent and substantial: *Clubb v. Saanich (District)*, [1996] B.C.J. No. 218 (Q.L.) (S.C.), Order 01-20; *University of British Columbia*, [2001] B.C.I.P.C.D. No. 21 (Q.L.), Order No. 165-1997; *British Columbia (Ministry of Attorney General)*, [1997] B.C.I.P.C.D. No. 23 (Q.L.).

However, if a supplier and its subcontractors consent to the public disclosure of information gathered by a university in its monitoring efforts, there will be no breach of

the *FOI/OPA*. The consent should include (and the public disclosure should be consistent with it) a reference to the intended method of collection of the information, the purpose for which it will be used, and it should state that the information collected is not confidential and that it will be publicly disclosed.

International Trade Law⁷

We will address three agreements that are often raised as bars to a university ethical procurement policy: NAFTA, WTO-AGP, and AIT. These agreements are relevant because those who oppose ethical procurement policies consider that the agreements create barriers. As we discuss below, the agreements simply do not create any barriers to the implementation of an ethical procurement policy by a university.

NAFTA

NAFTA was negotiated among the governments of Canada, the United States and Mexico. It came into force in Canada on January 1, 1994.

The obligations created by NAFTA are set out in Article 105. This Article provides that the Parties shall ensure that all necessary measures are taken to give effect to the provisions of the Agreement, including their observance, except as otherwise provided in the Agreement, by state and provincial governments.

NAFTA does not apply to university procurement of goods, services or construction services as provided in Chapter 10. Although Article 1001 provides that Chapter 10 applies to a state or provincial entity set out in Annex 1001.1a-3, at this time, there are no provincial entities included in Annex 1001.1a-3. Therefore, these are excluded from any measure regarding the procurement of goods, services or construction services.

WTO-AGP

The World Trade Organization (“WTO”) has 147 members. It was established in 1995 to govern trade amongst its members. The WTO-AGP came into force in Canada on January 1, 1996.

The purpose of the WTO-AGP is to open up international business to international competition. The WTO-AGP only has 28 members. The agreement consists of general rules and obligations that apply to members regarding government procurement of goods, services and construction services. The WTO-AGP applies to federal entities. At Annex 1 of Appendix 1 of the agreement, the federal government entities to which the WTO-AGP applies are set out. At Annex 2, “sub-central government entities” to which the WTO-AGP applies are set out – there are none listed. At this time, provincial

⁷For a good in depth review of trade law in Canada, see *International Trade and Investment Law in Canada (2nd Edition)*, by Paterson and Band (Carswell: 1994) (looseleaf).

government entities, as with NAFTA, are excluded from any measure regarding the procurement of goods, services or construction services under the WTO-AGP.

AIT

On July 18, 1994, the Canadian federal government, the provinces and the territories signed the AIT. Annex 502.4 (the “Annex”) of the AIT applies to university procurement. It came into force on July 1, 1999. The Annex applies to measures related to procurement within Canada of goods and services where the procurement is \$100,000 or greater. In the case of construction, the procurement must be greater than \$250,000.

The Annex prohibits discriminatory procurement practices, and it requires a measure of transparency in matters covered by the Annex so that they are made readily accessible. However, even where measures are discriminatory, they are still permissible if made for a legitimate objective. For example, a legitimate objective may be for the “protection of the health, safety and well-being of workers” (s. F(2)(f)). Although it is very unlikely that a university ethical procurement policy would be deemed to be discriminatory, it could likely be justified on the basis that it is for the protection of the health, safety and well-being of workers.

Further, the Annex does not apply to the procurement of goods a university purchases for resale to the public (section L(a)).

University Compliance with International Conventions – the ILO

International treaties or conventions that Canada has signed and ratified do not become part of the domestic laws of the country. There needs to be some form of legislative act transforming the international law into the domestic sphere, for instance, by enacting Canadian legislation that specifically incorporates the legal principles contained in international treaties. Although a university does not have the legal obligation to comply with ILO conventions, it can be argued that it has the moral obligation as a public institution to do so.

In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, the Supreme Court of Canada wrote:

“Because the Convention on the Rights of the Child had not been implemented by the Canadian Parliament, “[i]ts provisions therefore have no direct application within Canadian law.””

The Court went on to conclude:

“Nevertheless, the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review...”

Conclusion

There should be no great difficulty in a university implementing an ethical procurement policy. Once the framework for such a policy is in place, the administration of the policy should not be difficult either. Costs of implementation and administration of the policy can be minimized as well by putting the onus on the supplier to verify compliance, for example, by their own assurances and those of third-party verifiers. There are some legal risks, but the risks are not so great that they cannot be overcome by good preemptive planning.

[We gratefully acknowledge the assistance of our colleague, Janet Lennox, of McGrady, Baugh & Whyte.]

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APPENDIX F – COMPLIANCE & DISCLOSURE FORM SAMPLE (MCMASTER)



DIRECT SUPPLIER

McMaster Vendor #

Confirmation of Compliance Form

Must be completed by the direct supplier to the University

Vendor Product ID(s)# _____

Product Description _____

Part 1 - Direct Supplier Contact Information

Company/Business Name	_____
Street Address	_____
Prov./State	_____ Country _____
Postal Code/Zip	_____
Mailing Address (if different)	_____
Contact Person/Position	_____
Phone Number	_____
Fax Number	_____
Email Address	_____
Areas of Code Non-Compliance: Please attach explanation and plan with timelines for compliance	_____

Part 2 - Verification of Code Compliance

<p>I hereby certify that I have read and fully understand the McMaster Code of Labour Practices provided to me by McMaster University. I have collected indirect supplier forms for the suppliers/contractors/subcontractors and manufacturers involved in the production of the product(s) listed above and noted on this disclosure form. I will keep these documents on file and make them accessible to representatives of McMaster University upon request. To the best of my knowledge I am not aware of any areas of non-compliance within this supply chain other than those made note of in this document. I also agree to notify McMaster University of any changes within the supply chain or with the compliance of any supplier listed. To the best of my ability I will ensure that this supply chain meets or exceeds the McMaster University Labour code.</p>	
Date	
Owner/Operator Name (please print)	Owner/Operator Signature

Part 3 - Disclosure Information

Please fill out the following information for each step in the supply chain for the product noted on page one. Remember to also fill out the excel spreadsheet with the same information. (Photocopy and add additional sheets as necessary)

Company/Business Name	_____
Street Address	_____
Prov./State	_____
Country	_____ Postal code/Zip _____
Mailing Address (if different)	_____

Contact Person/Position	_____
Phone Number	_____
Fax Number	_____
Email Address	_____
Areas of Code Non-Compliance (if applicable)	_____
Please attach explanation and plan with timelines for compliance	_____

Company/Business Name	_____
Street Address	_____
Prov./State	_____
Country	_____ Postal code/Zip _____
Mailing Address (if different)	_____

Contact Person/Position	_____
Phone Number	_____
Fax Number	_____
Email Address	_____
Areas of Code Non-Compliance (if applicable)	_____
Please attach explanation and plan with timelines for compliance	_____

APPENDIX G – SAMPLE OF CANADIAN EPP POLICIES IN PRACTICE & MSN MODEL TEMPLATE

- a. McMaster University:
 - i. http://www.mcmaster.ca/purchase/labour_code/labour.htm
- b. University of Toronto:
 - i. http://www.trademarks.utoronto.ca/policy_code.html
- c. Simon Fraser University:
 - i. <http://www.sfu.ca/vpfinance>
 - ii. <http://www.criticalthoughts.ca/nosweat/policy.html>
- d. City of Vancouver's EPP & the Supplier Code of Conduct:
 - i. <http://vancouver.ca/ctyclerk/cclerk/20050217/cs7AppendixA.htm>
 - ii. <http://vancouver.ca/ctyclerk/cclerk/20050217/cs7AppendixB.htm>
- e. Maquila Solidarity Network Model Template:
 - i. http://www.maquilasolidarity.org/nosweat/pdf/MSN_Model_University_Code.doc

APPENDIX H – THE EPP QUESTIONNAIRE

Ethical Purchasing Policy Questionnaire

As you know, I am a graduate student at Simon Fraser University currently working on a research project for my Masters in Corporate Social Accountability. The end result of this research project will be my Project write up based on the May 7-8th, 2004 EPP Conference held at SFU which you attended, along with a WebSite and CD Rom that will be publicly available – particularly for policy makers and stakeholders engaged in EP Policy development or implementation.

This Project has been researching Public Institutions across Canada that are engaged in socially and environmentally responsible procurement within their institutions. The opportunity to cause leadership in social, environmental and economic business practices as public institutions is increasing, and the goal of this MA project is to document the shape and scope of Ethical Purchasing Policies (EPP) at the public institutional level in Canada towards a better understanding of how and if Public Institutions take responsibility for their impact on a global scale towards becoming leaders in Corporate Social Accountability.

The researcher seeks Ethical Purchasing Policy (EPP) information from you as a key player in Canada currently engaged in EP policy implementation. Outlined below are several central questions which intend to encourage thoughts surrounding both broad issues of core principles and a more focused examination of the practicalities of implementing Ethical Purchasing Policies (EPP).

Question 1:

How did/do students / staff / faculty become engaged with the EPP issue?

- human rights organizations
- Union education
- church involvement
- media awareness
- other

Question 2:

How long did it take to get to the policy approval stage.

- What was your approach
- What were the implications of your approach.
- Was your approach effective and what are the advantages and disadvantages.
- In retrospect, what approach would work best for others.

Question 3:

How/easy difficult has it been to get your institution to engage with EPP?

- principles/concepts (i.e.: disclosure, ILO standards, human rights)
 - Is your policy based on UN and ILO Conventions? If not, what is it based on?
- media awareness
- costs of implementation
- fear of litigation (i.e.: factory location disclosure)
- other

Question 4:

What is the extent, purpose and value of your institutions' overall procurement?

Question 5:

What areas of product purchasing, and their value, does your Institution's policy cover?

- apparel only
- licensed/logoed goods
- coffee & apparel
- other

Question 6:

What policy compliance mechanism's does your policy use and how effective do you think they are?

Question 7:

After policy implementation (including implementation of compliance mechanism(s)), what are supplier responses?

- cooperative/positive
- resistant/ negative
- other

Question 8:

What are the impediments, if any, to requiring suppliers to disclose the location where products are made?

- What sort of information does your institution have now on the place of manufacture of its procurement items?
- What information do they have now on where these things are made?
- What recommendations do you have for overcoming those impediments?

Question 9:

Does your institution buy any products in tandem with other institutions locally, provincially or nationally within Canada? What are those things?

Question 10:

What do you know about the state of implementation of "no sweat" and ethical procurement policies in other public institutions in Canada?

- What does their policy cover?
- What monitoring mechanism do they use?
- How many and which institutions have restricted their motions to requiring identification of the place of origin of purchased goods?
- What is your opinion on other policies you have seen?

Question 11:

Do you think that a Canadian based consortium of Ethical Purchasing would give more buying power to public institutions allowing them more influence over their suppliers complying with the policy? In your opinion is this a reasonable and an effective method to increase corporate accountability and to decrease implementation costs to individual institutions? If not what do you suggest?

Question 12:

Do you think that a healthy mix of multi stakeholders is the best approach in this policy work? What other style would you prefer or that you are currently using?

Question 13:

Do you think setting up an advisory committee locally and / or nationally would be beneficial?

Question 14:

What do you see as the next level for the EPP movement?

- standardized global codes and monitoring?
- Fair Trade corporate education/organizing?
- International unionizing?
- Federal lobbying on trade agreement "social clause" inclusion?
- Activist resistance to globalization through protests and sit-ins?
- Other

Question 15:

Do you see Fair Trade certified coffee (Transfair) as a great example of the practicality and implementation structure of any Ethical Purchasing policy?

- What is the extent, purpose and value of your institutions' procurement of coffee?
- Does your institution procure any fairly traded coffee now?

Question 16:

What, broadly, are the other categories of things bought by your institution?

- What are the impediments, if any, to your institution going further by actually ensuring that all products are in compliance with I.L.O. standards (ie. the model 'no sweat' resolution)?
- What recommendations do you have for overcoming those impediments? And other related questions.

Question 17:

- Please add any comments here if the questionnaire missed any important aspects on EPPs.

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