

Legal update

Modern slavery: Canada moves closer to supply chain legislation

April 2019

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More draft legislation is set to be tabled in Parliament imposing obligations on Canadian companies' supply chains. On April 4, the All-Party Parliamentary Group to End Modern Slavery and Human Trafficking announced the completion of the draft *Transparency In Supply Chains Act (TSCA or Bill)*, which is set to be tabled shortly in the Senate.

While a full draft of the TSCA is not yet available, Canadian businesses should be aware of and prepared for potential reporting and compliance obligations for modern slavery and human trafficking in supply chains that may come if the TSCA ultimately achieves royal assent. A definition of modern slavery under the TSCA has not yet been disclosed, but it will likely capture the use of forced labour, child labour, and human trafficking in overseas business operations.

The proposed TSCA provides for four mechanisms to combat modern slavery: (1) a reporting requirement for qualifying entities; (2) a duty of care for all businesses that meet an annual turnover threshold; (3) the creation of an Ombudsperson and Compliance Committee; and (4) mechanisms to receive and investigate disclosures of modern slavery from whistleblowers.

Key provisions

At a high level, the TSCA will impose obligations on Canadian businesses to actively take steps to prevent the use of modern slavery in their overseas supply chains. The *Bill* will create reporting obligations on qualifying entities, including completion of a supply chain questionnaire on a company's policies and procedures related to forced labour, child labour, and human trafficking.

The proposed TSCA also aims to establish a duty of care for all businesses meeting a regulated annual turnover threshold. The duty of care provisions will establish a legal responsibility to take reasonable steps to prevent the use of modern slavery in a business's overseas operations.

The *Bill* will create an Ombudsperson and Compliance Committee. In doing so, the TSCA envisions that the mandate of the Canadian Ombudsperson for Responsible Enterprise, which was announced in early 2018, could be expanded to capture the ombudsperson responsibilities as contemplated in the TSCA.

The TSCA will also create mechanisms to permit investigating reports of modern slavery, including from whistleblowers, as well as enforcing the reporting obligations and legislated duty of care, discussed above.

Implications for Canadian business

Although the TSCA has not yet been tabled in the Senate and therefore many details are still forthcoming, it follows the tabling of a similar private member's bill aimed to tackle modern slavery, as well as the Government of Canada's announcement in February 2019 that it will consult on bringing forward supply chain reporting legislation. Modern slavery and supply chain reporting is currently high on the legislative agenda and has a degree of cross-party support.

Whatever legislation moves forward, Canadian companies should be alive to the potential impact on their businesses, especially if their operations or supply chains encompass developing countries. A risk assessment and review of company policies and procedures as well as training and contractual arrangements with suppliers may be prudent in light of the TSCA and its broad duty of care, reporting, investigation and enforcement mechanisms for those who meet the threshold under the *Bill*.

Norton Rose Fulbright will be closely following these legislative developments and will provide a further update and outline of the TSCA once it is available for review.

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