At the present time, Canada lags behind many of its most important trading partners in ensuring that businesses are addressing modern slavery in their operations and supply chains. In fact, Canada currently has no specific modern slavery disclosure or supply chain transparency legislation.

While Canadian public companies are required under applicable securities legislation to make disclosure of material risks to which their business may be exposed in respect of modern slavery, private Canadian companies have no such obligation to disclose. In addition, there is no specific Canadian legislation prohibiting the use of forced labour or illegal child labour in the production of goods or the supply of services procured by the various levels of Canadian governments. And there is no general restriction on the importation into Canada of slave or forced labour-made goods. Many Canadian businesses are not offering their customers any disclosure of whether the products or services they sell are the product - in whole or in part - of men, women and children trapped in modern slavery.

Canada has fallen well behind many of its trading partners by not taking steps to address modern slavery in businesses and their supply chains. For example, dozens of Canadian companies that carry on business in the U.K., California and Australia (jurisdictions that already have modern slavery or supply chain transparency legislation) are already complying with applicable reporting, disclosure and compliance obligations pertaining to modern slavery and
human trafficking in supply chains. Canadians only receive this disclosure on the activities of many Canadian companies courtesy of the efforts of foreign governments.

Many Canadian companies are also under pressure from investors, consumers, NGOs, industry associations and class-action lawyers to better disclose and better address the risks of modern slavery in their businesses and supply chains.

However, over the past 18 months, a number of steps have been taken by the federal government - as well as regulators in Quebec - that undoubtedly will bring modern slavery legislation to Canada. Each of these steps is discussed in more detail below:

**Public Company Continuous Disclosure - September 2018**

The Quebec Autorité des marchés financiers (the "AMF" - Quebec securities commission) issued a written guidance to issuers identifying what the AMF expects in terms of modern slavery disclosure under existing securities legislation. The AMF also took the position that existing securities regulation may require the disclosure of certain information regarding modern slavery in the continuous disclosure documents of issuers. The guidance instructs boards of directors, audit committees and certifying officers to ensure that the disclosure provided in the documents filed under securities regulation is consistent with management's assessment of the materiality of modern slavery-related issues.

**Federal Government Apparel Ethical Procurement Program - September 2018**

Following the completion of a pilot project, there is now a protocol for the ethical procurement of certain apparel by Public Service and Procurement Canada, a department of Canada's federal government. The intended goal is to ensure that apparel is acquired from suppliers that operate in an ethically and socially responsible manner. Suppliers must provide certifications that they and their first-tier subcontractors do not use forced labour, compulsory labour or child labour.

**House of Commons Committee Report - October 2018**

The Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development of the House of Commons at this subcommittee released its
report titled "A Call to Action: Ending the Use of All Forms of Child Labour in Supply Chains." The report contains seven recommendations to the federal government, including that it:

- Develop a strategy to incent businesses to monitor their supply chains for the use of child labour and forced labour;
- Develop legislative and policy initiatives that motivate businesses to eliminate any use of any form of child labour in their supply chains; and
- Consider how to use Canada's import regime as well as its public procurement policies to incentivize businesses to eliminate the use of any form of child labour in their supply chains.

The federal government responded to this call to action in early 2019, essentially accepting the recommendations and confirming that it would embark on a consultation with respect to potential modern slavery legislation in Canada.

**House Commons Bill C-423 - December 2018**

Tabled as a Private Member's bill in the most recent session of the House of Commons, the former Bill C-423 proposed a wider scope of regulation than the modern slavery legislation in force in the U.K., California and Australia. The Bill required each business to which the Bill would have applied to post on its website an annual report setting out, among other items, the steps the entity has taken during the previous year to prevent and reduce the risk that forced labour or child labour is used in the business or its supply chain. Each such annual report would have had to contain an attestation from a director or officer that the information in the annual report was true, accurate and complete. The Bill also included compliance verification powers to a designated enforcement official.

The Bill would have also amended the Canadian customs tariff to prohibit the importation into Canada of goods manufactured or produced wholly or in part by forced labour or child labour.

**Canadian Ombudsperson for Responsible Enterprise (CORE) - April 2019**

After a 14-month delay, the Canadian federal government finally appointed a person to serve as the Canadian Ombudsperson for Responsible Enterprise - an office created in January 2018 to investigate allegations of human rights abuses by Canadian businesses abroad. Styled as a Special Advisor to the Minister of international Trade, the CORE was appointed by Order-in-Council. However, to date, the federal government has not taken the necessary steps to grant the expected investigative and other powers and authorities to the CORE. Accordingly, it
appears to remain inactive at this time.

All-Party Parliamentary Group - April 2019

On April 4, 2019, the All-Party Parliamentary Group to End Modern Slavery and Human Trafficking announced the completion of a draft Transparency in Supply Chains Act (TISCA), which it indicated would be tabled in the Canadian Senate. To date, it has not been tabled in the Senate nor has it been published by the House of Commons or the Senate.

It has been reported that the proposed TISCA provides for (1) a reporting requirement for prescribed businesses; (2) a duty of care for prescribed businesses; (3) the creation of an ombudsperson and compliance committee; and (4) a system for receiving and investigating complaints of modern slavery from whistleblowers, as well as providing protections for whistleblowers.

Government of Canada Consultations - June 2019

In response to the October 2018 House of Commons Committee report, the Government of Canada announced in early 2019 that it will "begin a process …to consult on possible supply chain legislation," adding Canada to a growing list of countries taking action to address this issue. A brief consultation was carried out, although no report on the results of the consultation has been publicly issued.

What will come next?

With the recent Canadian federal election just completed, the new minority government will soon announce its legislative and policy agenda. In doing so, it will have to take into account the positions of the other parties that it will need to remain in power and to enact its legislative agenda. This will increase the already considerable pressure that has been building over the past 21 months to introduce some form of modern slavery disclosure legislation, perhaps with a mandatory due diligence requirement for the companies subject to the law. Its absence is quite conspicuous.

In our next article, we will look at modern slavery laws and related legislation around the world, highlighting the material compliance and reporting requirements and the evolution of these laws with a view as to what may be coming next for Canadian businesses.

View part one of the series here »
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