

November 30, 2020

# Canadian Modern Slavery Act Proposed – Would Create Additional Reporting Obligations for U.S.-based Multinationals

At the end of October, a Modern Slavery Act was introduced in the Canadian Senate. The proposed Act is substantially similar to bills introduced earlier in the year and in late 2018 and is broadly consistent with disclosure-only modern slavery legislation adopted in other jurisdictions. Like similar legislation in other jurisdictions, if adopted, a large number of U.S.-based multinationals would be required to comply with the Act. In this Alert, we describe the requirements of the Act and discuss how they would fit into the global modern slavery reporting framework.

**Attorneys**  
[Michael R. Littenberg](#)  
[Anne-Marie L. Beliveau](#)  
[Nellie V. Binder](#)

## Subject Entities

Like modern slavery acts in other jurisdictions, the Act would apply broadly.

*Covered activities.* An “entity” would be subject to the Act to the extent it engages in any of the following activities:

- Produces or sells goods in Canada or elsewhere. For purposes of the Act, the production of goods would include the manufacturing, growing, extraction and processing of goods.
- Imports into Canada goods produced outside Canada.
- Controls an entity engaged in any of the foregoing activities. For purposes of the Act, control can be direct or indirect.

*Covered entities.* “Entity” is defined in the proposed Act as a corporation or a trust, partnership or other unincorporated organization that meets any of the following requirements:

- Is listed on a stock exchange in Canada.
- Has a place of business in Canada, does business in Canada or has assets in Canada and that, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent financial years: (1) has at least C\$20 million in assets, (2) has generated at least C\$40 million in revenue or (3) employs an average of at least 250 employees.
- Is prescribed by regulations.

## Reporting

As noted above, the proposed Act is a disclosure-only statute. It would not require subject entities to adopt substantive policies or procedures to address modern slavery. However, like similar legislation in other parts of the world (i.e., California, Australia and the United Kingdom), it is intended to drive enhancements to modern slavery compliance programs through transparency.

*Report content.* A subject entity annually would be required to submit to the Minister of Public Safety and Emergency Preparedness a report that sets out the steps the entity has taken during the preceding year to prevent and reduce the risk that forced labor or child labor is used at any step of the production of goods in Canada or elsewhere by the entity or of goods imported into Canada by the entity.

In the report, the entity also would be required to include information pertaining to:

- Its structure and the goods that it produces in Canada or elsewhere or that it imports into Canada.
- Its policies in relation to forced labor and child labor.
- Its activities that carry a risk of forced labor or child labor being used and the steps it has taken to assess and manage that risk.
- Any measures taken to remediate any forced labor or child labor.
- The training provided to employees on forced labor and child labor.

The Minister would be empowered to specify the form and manner in which a report is to be provided.

The report content contemplated by the proposed Act is broadly consistent with that required by the modern slavery acts of other jurisdictions. Unless the Minister were to require reporting in a format that is inconsistent with other jurisdictions, we expect that U.S.-based multinationals already required to produce a modern slavery statement by California, Australia and/or the United Kingdom will address the Canadian Act as part of their global modern slavery statement.

#### *Definitions of Forced and Child Labor*

The Act includes definitions of both forced and child labor.

“Forced labor” is defined as labor or service provided or offered to be provided by a person under circumstances that (1) could reasonably be expected to cause the person to believe their safety or the safety of a person known to them would be threatened if they failed to provide or offer to provide the labor or service or (2) constitute forced or compulsory labor as defined in Article 2 of the International Labour Organization’s Forced Labour Convention. That Convention defines forced or compulsory labor as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily (subject to several narrow exceptions specified in the Convention).

“Child labor” is defined as labor or service provided or offered to be provided, in Canada, by persons under the age of 18 under circumstances that (1) are contrary to the laws applicable in Canada or, if provided or offered to be provided outside Canada, under circumstances that, if provided or offered to be provided in Canada, would be contrary to the laws applicable in Canada or (2) constitute the worst forms of child labor as defined in Article 3 of the ILO’s Worst Forms of Child Labour Convention. That Convention defines the worst forms of child labor as (1) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict, (2) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, (3) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties, or (4) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

*Attestation requirement.* The report would be required to include an attestation by a director or officer of the reporting entity that the information in the report is true, accurate and complete.

*Timing.* The report would be required to be submitted to the Minister within 180 days after the end of the reporting entity's fiscal year.

*Publication of the report.* In addition to submitting its report to the Minister, a reporting entity would be required to make the report available to the public, including by publishing it in a prominent place on its website.

The Minister also would be required to maintain an electronic registry containing the reports provided to it. The registry would be required to be made available to the public on the Department of Public Safety and Emergency Preparedness website.

### Penalties for Non-Compliance

A criticism of most other modern slavery acts is their lack of a meaningful enforcement mechanism. The Act seeks to address this perceived deficiency.

Under the Act, persons or entities that fail to submit or publish a report in accordance with the Act could be fined up to C\$250,000. In addition, every person or entity that knowingly makes a false or misleading statement or knowingly provides false or misleading information to the Minister or a person designated by the Minister to administer and enforce the Act, could be fined up to C\$250,000. An officer, director or agent of the person or entity who directed, authorized, assented to, acquiesced in or participated in the commission of an offense also could be held liable for the offense.

### Amendment of the Customs Tariff

The Act also would amend the Customs Tariff to prohibit the importation into Canada of goods that are mined, manufactured or produced wholly or in part by child labor (as defined in the Act), or to prescribe the conditions under which those goods may be prohibited. The Customs Tariff already contains a similar prohibition on goods involving forced labor. That prohibition took effect on July 1, 2020 as part of the US-Mexico-Canada Agreement, which is the successor to NAFTA.

### About Our Practice

Ropes & Gray has a leading ESG, CSR and business and human rights compliance practice. We offer clients a comprehensive approach in these subject areas through a global team with members in the United States, Europe and Asia. In addition, senior members of the practice have advised on these matters for more than 30 years, enabling us to provide a long-term perspective that few firms can match.

For further information on the practice, click [here](#).

Please click [here](#) to visit our CSR and Supply Chain Compliance website.