



## Canada's Modern Slavery Act: **WHAT BUSINESSES NEED TO KNOW NOW!**

### **OVERVIEW**

The *Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff* (Canada's Modern Slavery Act or the "CMSA") is set to come into force on January 1, 2024. The CMSA's purpose is to reduce the use of forced labour and child labour by increasing transparency in supply chains. It seeks to implement into Canadian law several international conventions that define and prohibit forms of forced labour and child labour.

### **FORCED LABOUR AND CHILD LABOUR**

Labour is deemed to be forced when it could reasonably be expected to cause the targeted person to believe their safety would be

threatened or they would be penalized if they failed to provide the labour.

Child labour covers labour by persons under the age of 18 that is contrary to Canadian laws, that is provided under circumstances which are mentally, physically, socially or morally dangerous to them or that interferes with their schooling.

### **WHO NEEDS TO REPORT?**

A non-governmental reporting entity is a corporation, trust, partnership or unincorporated organization that:

1. Is listed on a stock exchange in Canada; or
2. Has a place of business in Canada, does business in Canada or has assets in Canada and, based on its consolidated financial

statements, meets at least two (2) of the thresholds for at least one of its two most recent financial years:

- a. Have at least CAD20 million in assets;
- b. Have generated at least CAD40 million in revenue; or
- c. Employ an average of at least 250 employees.

Moreover, to be subject to the annual reporting obligations, the non-governmental reporting entity must be engaged in one of the following activities :

1. Produce, sell or distribute goods in Canada or elsewhere;
2. Import into Canada goods produced outside Canada; or
3. Control an entity that is engaged in 1) or 2).

The word “goods” is not defined in the CMSA. Intangible products, such as software, could be considered goods if a broad interpretation of the term is used.

## **FOREIGN JURISDICTIONS TO THE RESCUE?**

The United Kingdom and Australia have adopted similar legislation which heavily inspired the adoption of the CMSA. It is appropriate to look at these foreign jurisdictions in order to determine if an entity's affiliate is already required to comply and report with a comparable legislation.

## **WHEN DO YOU REPORT?**

The entity must prepare an annual report on or before May 31 of each year to the Minister of Public Safety and Emergency Preparedness. The first annual report under the CMSA is due on or before May 31, 2024.

## **HOW TO SATISFY YOUR REPORTING OBLIGATION UNDER THE CMSA?**

The annual report must:

- State the steps the entity has taken during its previous financial year to prevent and reduce the risk that forced or child labour 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, and
- Include the entity's structure, policies related to forced and child labour, parts of its supply chain at risk of forced and child labour, remedial measures taken, employee training and assessment method chosen to ensure the absence of forced and child labour.

It is possible to prepare a joint Annual Report for all the entities forming the business.

## **WHERE TO REPORT?**

The annual report must be submitted to a public registry established by the Minister of Public Safety and Emergency Preparedness,

published in a prominent place on the entity's website and sent to the entity's shareholders, along with its annual financial statements, if the entity is incorporated under the Canada Business Corporations Act.

## WHO MUST APPROVE THE REPORT?

The annual report must be approved by the governing body of the covered entity which in the case of a corporation would be its board of directors.

In the case of a joint annual report, the report must be approved either by the governing body of each covered entity or by the governing body that controls each entity included in the joint annual report.

The approval of the annual report must be evidenced by a statement contained in the report and by the signature of one or more members of the governing body approving the report.

## WHAT STEPS SHOULD YOU BE TAKING BEFORE FILING THE ANNUAL REPORT

A covered entity should :

- Gather information regarding its supply chain to identify possible risk areas. This may include an examination of risks by geography, sector or industry, product or services and entities contained in its supply chain.
- Draft board policies and internal guidelines designed to eliminate forced labour or child labour from its supply chain.
- Establish due diligence processes to spot the occurrence of forced and child labour as these will have to be included in the annual report. If such incidents are revealed, it should enact measures to remediate them.
- Amend or adjust their existing and future supply or service provider agreements to include specific clauses which allows a covered entity to request and obtain





from its suppliers and service provider the information required to perform and complete the due diligence required under the CMSA.

- Amend or adjust the representations and warranties contained in such agreements to prevent forced and child labour.

- Guilty of an offence punishable on summary conviction.
- Liable to a fine of not more than \$250,000.

Should you have any questions about the CMSA, please reach out to a member of Miller Thomson's [ESG and Carbon Finance](#) Group.

## WHAT IS THE SANCTION FOR A FAILURE TO COMPLY WITH THE CMSA?

Every entity (including any director, officer or agent or mandatary of such entity) who fails to file and publish its annual report, obstructs or fails to cooperate with an investigation or an enforcement action, or provides false or misleading information is:

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Bruno is a commercial lawyer whose practice is focused on capital markets and public and private M&A transactions. He has been recognized in Canada's Best Lawyers list in the category of Mergers and Acquisitions since 2021.

Bruno has a particular interest with all aspects of ESG and with respect to sustainable financing as a mean to mitigate and adapt to climate change and the disclosure rules applicable to the risks associated with climate change. In 2020, Bruno was named on the Canadian Climate Governance Experts Panel of the Canada Climate Law Initiative and as such he is frequently called to present to board or directors and trustees of pension fund on governance issues related to climate change.



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Jason Kroft is a senior corporate lawyer with over two decades of experience assisting his Canadian and international business clients.

Jason leads efforts in emissions trading, carbon finance, green bonds, sustainable-linked notes and climate change work. Jason routinely acts for a diverse range of carbon markets participants including project developers and sponsors, lenders and other financial institutions, carbon brokers and traders. Jason advises boards of directors, C-Suite executives, executive leadership teams, chief legal officers, general counsels, chief sustainability officers, risk management teams and business managers in developing and implementing strategies to consider, manage, and report on challenges and opportunities related to ESG and Carbon Finance and sustainability in general, to address the increasing risks of 'greenwashing' or 'climate-washing' and to identify and consummate opportunities inspired by the emerging ESG and carbon markets.

