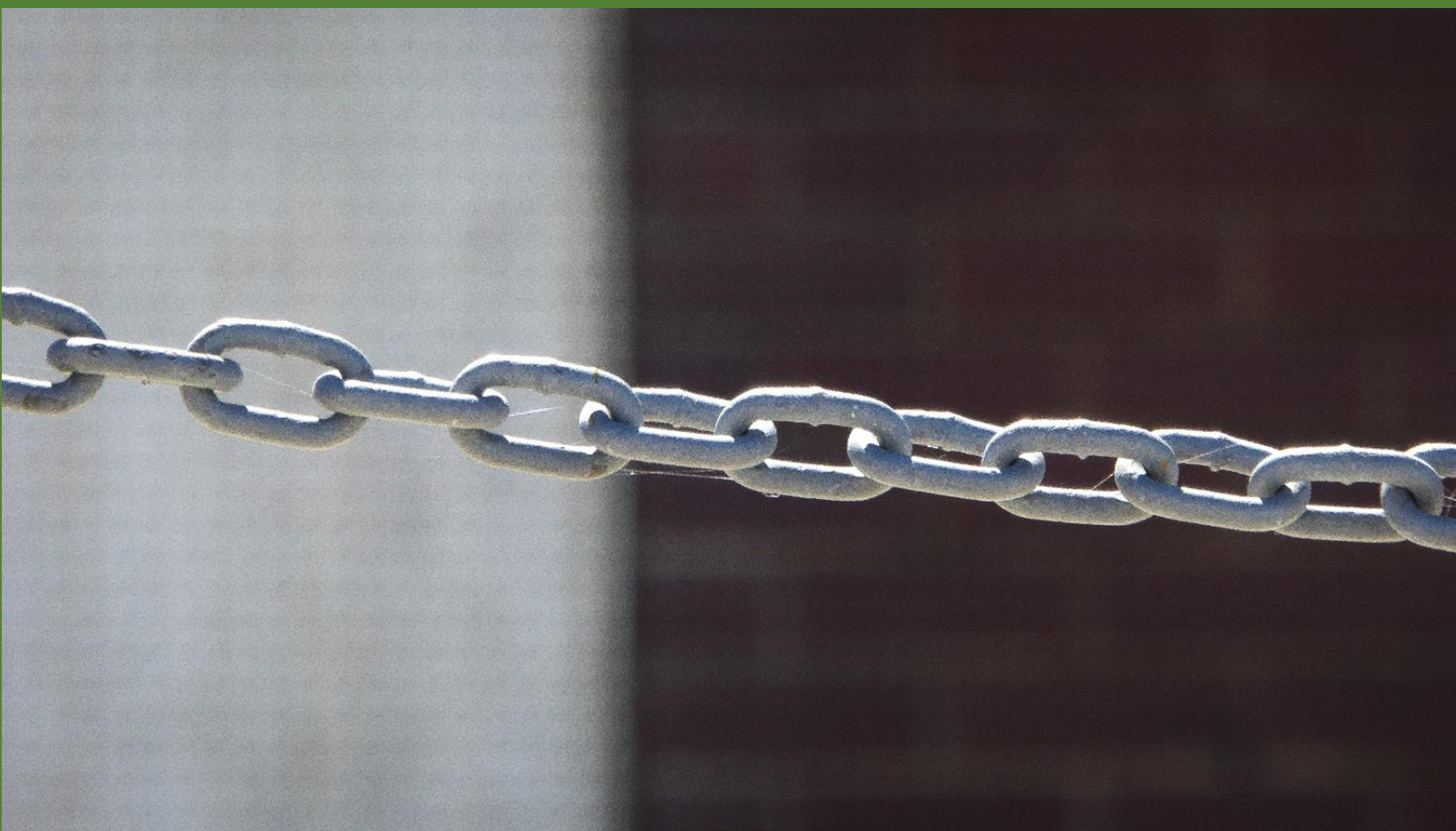


# Transparency in Supply Chains Act

A Proposed Model Bill



**April 2019**

International Justice and Human Rights Clinic



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**Suggested Citation:**

Transparency in Supply Chains Act: A Proposed Model Bill, Allard International Justice and Human Rights Clinic (Vancouver: Allard School of Law, April 2019).

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## EXECUTIVE SUMMARY

The following proposed legislation, entitled the *Transparency in Supply Chains Act* (“*TSCA*” or “*the Proposed Act*”), provides a model regulatory framework for human rights protection in the operations of Canadian businesses abroad. The *TSCA* calls for the Government of Canada to establish an Ombudsperson for Transparency in Supply Chains, a supply chain human rights reporting requirement, and a statutory duty of care requiring Canadian businesses take reasonable steps to avoid the use of forced labour, child labour, and human trafficking in their operations abroad. The purpose of this proposed legislation is to influence the framework of upcoming changes to Canadian human rights and corporate accountability legislation.

## BACKGROUND

In 2015, the United Nations Human Rights Committee (“the Committee”), which monitors the implementation of the International Covenant on Civil and Political Rights, issued concluding observations based on Canada’s most recent periodic report. In their observations, the Committee called for Canada to respond to alleged human rights abuses committed by Canadian companies operating abroad. Specifically, the Committee highlighted the inaccessibility of remedies available to victims, as well as the absence of an independent investigative body and general legal framework to solicit and respond to complaints.

In response to these concerns, the International Justice and Human Rights Clinic published a report on supply chain transparency in 2017 entitled [\*In the Dark: Bringing Transparency to Canadian Supply Chains\*](#), and drafted the *TSCA* based on the report’s findings.

In early 2018, the Government of Canada announced the creation of the Canadian Ombudsperson for Responsible Enterprise (CORE). The CORE’s stated purpose is to investigate alleged human rights abuse related to the activity of Canadian companies abroad. The *TSCA* is designed to work with the CORE and expand the CORE’s mandate for better human rights

protection. As of April 2019, the position of the CORE was still in development, which leaves open the possibility of expanding the position's mandate prior to the appointment of the CORE. This would allow the CORE to fulfill the duties of the Ombudsperson referred to in the *TSCA*.

## SUMMARY OF PROPOSED SUPPLY CHAIN LEGISLATION (*TSCA*)

The *Proposed Act* outlines four mechanisms to improve Canadian corporate compliance with human rights standards. Part I of the *TSCA* details the creation of an Ombudsperson and Compliance Committee to oversee the administration of the legislation's functions. The Ombudsperson will investigate claims of human rights abuse related to Canadian businesses, design a Supply Chain Questionnaire to which certain Canadian businesses must respond annually, and issue guidelines that establish expected corporate practices for compliance with international human rights standards. We suggest that Parliament broaden the CORE's mandate to incorporate the proposed powers of the *TSCA* Ombudsperson. A separate Compliance Committee will review investigative reports published by the Ombudsperson and determine relevant remedies.

Part II of the *TSCA* imposes a reporting requirement on qualifying entities that will apply to all extractive industry businesses, as well as all other Canadian businesses with an annual turnover greater than an amount set by the Minister of International Trade. The *TSCA* recommends that compliance be mandatory for all businesses in Canada with an annual turnover greater than 35 million CAD per year.

This reporting requirement consists of responses to a Supply Chain Questionnaire and an addendum for further elaboration. Questions will be aimed at a qualifying entity's policies to address the practices of forced labour, child labour, and human trafficking in their supply chains. Questionnaire responses and addendums will be made publicly available through a database maintained by the Ombudsperson, with the intention that increased transparency will lead to implementation of better human rights protection in supply chains.

Part III of the *TSCA* establishes a duty of care for all businesses meeting an annual turnover threshold, which we propose should be set at 100 million CAD per year. This provision establishes a legal responsibility, in addition to compliance reporting, for large economic actors to take reasonable steps to avoid the use of forced labour, child labour, and human trafficking in their operations abroad.

Part IV of the *TSCA* creates mechanisms to receive and investigate disclosures of forced labour and child labour from whistleblowers. It encourages individuals to report information that could show that forced labour has been, is being or is likely to be used by a covered entity or a subsidiary of a covered entity by providing whistleblowers with confidentiality guarantees, protection from reprisals, and the means to enforce their right to be protected from reprisals.

## METHODOLOGY

Pujan Modi, Jonathan Paterson, Serge Grochenkov, and Chris Seo of the International Justice and Human Rights Clinic (IJHR Clinic) at the Peter A. Allard School of Law, University of British Columbia drafted the *TSCA*. Clinic Director Nicole Barrett supervised, reviewed and edited the legislation. External experts provided helpful guidance on structure and scope.

Research for the *TSCA* consisted of desk research, legal analysis and dialogue with academics, legislators, researchers and activists with expertise in the field of business and human rights. This dialogue enabled the *TSCA* to reflect and incorporate other proposals for improved regulation of Canadian business activity abroad. The IJHR Clinic deeply values the input of all those who provided commentary, in particular Professor Shin Imai (Osgoode Law, York University), Senator Marilou McPhedran (Senate of Canada), T. Markus Funk (Perkins Coie), Professor Jocelyn Stacey (Allard Law, UBC), Delaney Greig (Shareholder Association for Research and Education), Tom Devine (Government Accountability Project) and David Hutton (Centre for Free Expression, Ryerson University).

The initial framework of the TSCA is based on the concluding recommendations in the IJHR Clinic's report, [\*In the Dark: Bringing Transparency to Canadian Supply Chains\*](#).<sup>1</sup> Much of the Proposed Act's content is influenced by existing foreign legislation including the UK's *Modern Slavery Act*, France's *Loi de Vigilance*, and the state of California's *California Transparency in Supply Chains Act*. Canadian legislation including the *Extractive Sector Transparency Measures Act* and the *Canadian Human Rights Act* served as models for legislative drafting on human rights and transparency issues. Certain provisions from previous attempts to introduce regulation on Canadian supply chains, including Bill C-300 (*Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act*) and Bill C-486 (*Conflict Minerals Act*) were also incorporated into the Proposed Act.

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<sup>1</sup> The Proposed Act and underlying research report reflect the views of the Allard International Justice and Human Rights Clinic. They do not represent the official position of the Allard School of Law or the University of British Columbia.

# ***An Act Respecting Transparency in Supply Chains***

## **Short Title**

### **Short Title**

**1** This Act may be cited as the *Transparency in Supply Chains Act*.

## **Interpretation**

### **Definitions**

**2** The following definitions apply in this Act.

***child*** means every human being below the age of eighteen years.

***child labour*** means employment of a child

- (a) under 12 years of age who is economically active for 1 or more hours per week;
- (b) under 15 years of age who is economically active for at least 14 hours per week;
- (c) under 18 years of age who is economically active for at least 43 hours per week; or
- (d) under 18 years of age who participates in work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons;

***civil society organizations*** means a not-for-profit or charitable organization whose governing structure is independent of government direction, and includes, but is not limited to:

- (a) registered charities;
- (b) non-governmental organizations;
- (c) community groups;
- (d) women's organizations;
- (e) Indigenous organizations

- (f) faith-based organizations;
- (g) professional associations;
- (h) trade unions;
- (i) self-help groups
- (j) social movements;
- (k) business associations;
- (l) coalitions;
- (m) human rights organizations
- (n) advocacy groups

**commercial development** means

- (a) exploration, extraction, production, manufacture, sale, importation, or harvesting;
- (b) the acquisition or holding of a permit, license, lease or any other authorization to carry out any of the activities referred to in paragraph (a); or
- (c) any other prescribed activities in relation those goods described in sections 21(2)(a)(i) to (xii) of this Act;

**corporation** includes

- (a) any company or legal person incorporated by or under an Act of Parliament or of any province; or
- (b) a business of a similar character, incorporated under the law of a country outside Canada;

**covered entity** means a corporation or a trust, partnership or other unincorporated organization that meets one of the following criteria:

- (a) is listed on a stock exchange in Canada; or
- (b) is a corporation incorporated by or under an Act of Parliament or of any province; or



(c) has a place of business in Canada, does any business in Canada or has more than \$50,000 in assets in Canada;

**director** means a director of a corporation or an individual performing a similar function or occupying a similar position for any covered entity;

**disclosure** means a disclosure referred to in sections 35, 36 or 37 [*internal disclosure; external disclosure; public disclosure*];

**employee** means an individual who has entered into, works under, or worked under a contract of employment for a covered entity, or any subsidiary of the covered entity;

**employment** means contract of service or apprenticeship, whether express or implied, and if express, oral or in writing;

**first-tier supplier** means a supplier that provides parts, materials, goods or services directly to a covered entity;

**forced labour** means the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion;

**gas** means natural gas and includes all substances, other than oil, that are produced in association with natural gas;

**human trafficking** means Trafficking in Persons as defined in section 279.01 of Canada's *Criminal Code*;

**limited liability partnership** means

(a) a limited liability partnership registered under any Act of Parliament or any province;  
or

(b) a firm of a similar character, incorporated under the law of a country outside Canada, that does any business in Canada, has a place of business in Canada, or has assets in Canada;

**limited partnership** means

(a) a limited partnership registered under any Act of Parliament or any province; or

(b) a firm of a similar character, incorporated under the law of a country outside Canada, that does any business in Canada, has a place of business in Canada, or has assets in Canada;

**minerals** means all naturally occurring metallic and non metallic minerals, including coal, salt, quarry and pit material, and all rare and precious minerals and metals;

**Minister** means the Minister of International Trade;

**oil** means crude petroleum, bitumen and oil shale;

**Office** means the office of the Ombudsperson for Transparency in Supply Chains;

**officer** in respect of a covered entity, means,

(a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager;

(b) every individual who is designated as an officer under a by-law or similar authority of the covered entity; and

(c) every individual who performs functions similar to those normally performed by an individual referred to in subsections (a) or (b);

**Ombudsperson** means the Ombudsperson referred to in section 5;

**partnership** means a relationship that subsists between persons carrying on a business in common with a view to profit;

**reprisal** means a measure referred to in section 38(1)(a) to (p) [*protection from reprisals*];

**subsidiary** means a subsidiary under section 29 of this Act that carries on business in or outside of Canada;

**supply chain** means the system that includes all of the activities, organizations, actors, technology, information, resources and services involved in the making and selling of goods, including every stage from the supply of materials and the manufacture of goods through to the final product for sale to end consumers;

**Whistleblower** means any individual who makes a disclosure of information that could show that forced labour or child labour has been, is being or is likely to be used by a covered entity or a subsidiary of a covered entity.

## **Purpose of Act**

### **Purpose**

**3** The purpose of this Act is to ensure that Canadian businesses act in a manner consistent with Canada's commitments to international human rights standards, and to identify, prevent, and remediate human rights violations in the supply chains of Canadian businesses.

## **Her Majesty**

### **Binding on her Majesty**

**4** This Act is binding on Her Majesty in right of Canada or a province.

## **Part I: Office of the Ombudsperson for Transparency in Supply Chains**

### **Division I: Ombudsperson and Directors**

#### **Ombudsperson and Directors**

**5** (1) There is hereby established an Office, to be known as the Office of the Ombudsperson for Transparency in Supply Chains, consisting of the Ombudsperson and up to three directors, to exercise the powers and perform the duties prescribed by the Act.

(2) On recommendation of the Minister made after the Minister has consulted with diverse civil society organisations operating in Canada with a focus on international business and human rights issues, the Governor in Council shall appoint the Ombudsperson for a term of five years.

(3) The Ombudsperson shall be appointed to hold office on a full-time basis. The Ombudsperson shall not serve in the position for more than two terms and is removable at any time for cause by the Governor in Council.

(4) On recommendation of the Minister made after the Minister has consulted with diverse civil society organisations operating in Canada with a focus on international business and human rights issues, the Governor in Council shall appoint up to three directors to hold office during pleasure for a term of five years.

(5) The Governor in Council may designate a director to temporarily act as Ombudsperson for a period of no more than 90 days only with approval of the Governor in Council after consultation with diverse civil society organisations operating in Canada with a focus on international business and human rights issues.

(6) The Governor in Council may appoint and fix the remuneration of experts or persons having technical or special knowledge to assist the Ombudsperson in any matter in an advisory capacity.

(7) The Ombudsperson shall be paid the remuneration determined by the Governor in Council.

(8) The Ombudsperson is to be reimbursed for reasonable travel and other expenses incurred in performing duties while absent from the Ombudsperson's ordinary place of work.

(9) The Ombudsperson may hire any employees that are necessary to carry out the activities of the Office and determine the duties of those person and the conditions of their employment, including their remuneration and benefits.

(10) The Minister must provide adequate, sustainable, and long-term funding in order for the Office to meet the purposes and provisions of this Act.

(11) Following consultations by the Minister with the Office and civil society organizations with experience, expertise and interest in human rights, the Governor in Council may make regulations for carrying out the purposes and provisions of this Act, including, but not limited to, regulations respecting disclosures made by whistleblowers.

## **Function and Powers**

**6** The Ombudsperson shall

(a) within 12 months of the coming into force of this Act issue guidelines for covered entities to achieve a supply chain that is consistent with international human rights standards. These guidelines shall be updated regularly as necessary, and shall incorporate:

(i) *The United Nations Guiding Principles on Business and Human Rights*;

(ii) relevant standards and principles from United Nations human rights treaties to which Canada is a party;

(iii) principles of gender-based analysis;

(iv) principles of environmental sustainability;

- (v) any other standard consistent with international human rights standards.
- (b) advise the Minister with respect to the management of supply chains of a covered entity;
- (c) receive grievances from victims of human rights abuse in the supply chain of a covered entity, or from civil society organizations who represent these victims, as described in section 7 of this Act;
- (d) investigate grievances referred to in subsection (c) when necessary;
- (e) publish reports regarding the findings of the investigation referred to in subsection (d);
- (f) maintain a public database described in section 9 of this Act;
- (g) create a supply chain questionnaire described in section 22 of this Act;
- (h) receive disclosures from a Whistleblower under section 36 of this Act;
- (i) investigate disclosures from a Whistleblower under section 36 of this Act;
- (j) publish reports regarding the findings of the investigation referred to in subsection (i); and
- (k) request a relevant law enforcement agency to provide personal protection measures described in section 39 of this Act

## **Grievances**

**7 (1)** The Ombudsperson shall receive grievances from any individual or group alleging that a contravention of the guidelines issued under section 6(a) has occurred, resulting in harm to that individual or group. Civil society organizations with a demonstrated interest in international business and/or human rights protections also have standing to file grievances under section 6.

(2) The complaint shall be in writing, shall identify the provisions of the guidelines issued under section 6(a) alleged to have been contravened, and shall set out reasonable grounds for the belief that a contravention has occurred.

(3) If the Ombudsperson determines that the request is frivolous or vexatious or is made in bad faith, they may decline to investigate the matter, offering a written decision for why the complaint will not be investigated. Otherwise, he or she shall investigate the matter described in the complaint and assess compliance with the guidelines set out in section 6(a).

## **Investigation**

**8** (1) For the purposes of an investigation under section 6(d) and (i), the Ombudsperson may, by order, acquire any relevant information or documents, including

- (a) a clarification of the covered entity's responses in a supply chain statement under section 23;
- (b) a statement of any policies that the covered entity has implemented for the purpose of meeting its obligations under this Act;
- (c) extrinsic evidence pertinent to the issue being investigated;
- (d) information gathered in a foreign jurisdiction, in accordance with the laws of that jurisdiction and basic procedural standards accepted in Canada;
- (e) the results of an audit of its report or of the records of payments for the financial year to which the report relates; and
- (f) any other documents that may be relevant to the investigation.

(2) The Ombudsperson may, for the purposes of an investigation under section 6(d) and (j), request an interview with a witness by making the request to the witness.

(3) If the Ombudsperson requests an interview with a witness in accordance with subsection (2), the witness shall meet with the Ombudsperson and answer all of his or her questions.

(4) The Ombudsperson may accept written responses to his or her questions in lieu of an interview.

(5) The Ombudsperson may make rules of procedure governing the practice and procedure of an investigation under section 6(d) and (i).

## **Database**

**9** The Ombudsperson shall maintain a public database containing

- (a) a list of entities expected to submit a supply chain statement under section 23 of the Act;
- (b) the supply chain statements submitted to the Ombudsperson under section 23 of this Act;
- (c) the guidelines issued under section 6(a) of this Act; and

(d) reports published pursuant to section 6(e) and (j) of this Act.

### **Referral**

**10** (1) If a covered entity fails to meet an obligation regarding a supply chain statement under section 23 of this Act, the Ombudsperson must notify the President of Export Development Canada, the Chairperson of the Canada Pension Plan Investment Board and the Minister of Public Services and Procurement, subject to subsection (2).

(2) Upon being given notice by the Ombudsperson, the covered entity will be given 60 days to meet the requirements under section 23 of this Act before the Ombudsperson notifies the relevant individual in subsection (1).

### **Offence**

**11** (1) Every person or covered entity that fails to comply with section 23 or an order made under section 8 is guilty of an offence punishable on summary conviction and liable to a fine of not more than \$2,000,000, subject to subsection (2).

(2) If a covered entity fails to meet obligations under section 23 or an order made under section 8, the Ombudsperson shall notify the covered entity and give the covered entity 60 days to meet those requirements before imposing a fine under subsection (1).

### **False or misleading statement or information**

(3) Every person or covered entity that knowingly makes any false or misleading statement or knowingly provides false or misleading information to the Ombudsperson is guilty of an offence punishable on summary conviction and liable to a fine of not more than \$2,000,000.

## **Division II: Compliance Committee**

### **Compliance Committee**

**12** (1) There is hereby established a tribunal to be known as the Supply Chain Compliance Committee whose functions are laid out in section 13 of this Act. The Governor in Council shall appoint members, including a Chairperson, to the Compliance Committee. The members appointed shall be

(a) current or former employees of the Government of Canada;

(b) current or former members of entities defined by this Act;

(c) current or former members of civil society organizations with experience, expertise and interest in human rights;

(2) The Ombudsperson shall have no control over the decision-making of the Compliance Committee.

(3) A member is to be appointed to the Compliance Committee by the Governor in Council, for a term of five years.

(4) A member shall not serve on the Compliance Committee for more than three terms.

(5) All decisions of the Compliance Committee must be supported by a majority vote.

(6) The Chairperson has supervision over and direction of the work of the Compliance Committee, including the allocation of work among the members and the management of the Compliance Committee's internal affairs.

(7) The Chairperson must be a member in good standing of the bar of a province or territory or the Chambre des notaires du Québec for at least ten years and at least two of the other members of the Compliance Committee must be members in good standing of the bar of a province or territory or the Chambre des notaires du Québec.

(8) The Chairperson and other Compliance Committee members may be removed from office by the Governor in Council for cause.

(9) The Chairperson is to be appointed as a full-time member of the Compliance Committee, and other Compliance Committee members are to be appointed as either full-time or part-time members.

(10) The members of the Compliance Committee shall be paid such remuneration as may be fixed by the Governor in Council.

### **Functions and Powers**

**13** (1) A panel of three members from the Compliance Committee, one from each of the groups in section 12(1) of this Act, shall review and adjudicate:

(a) investigation reports created by the Ombudsperson under section 6(e) and determine whether further remedy is needed;

(b) complaints of reprisal under section 39(1)(c) and determine whether a remedy is needed.



(2) In a review conducted under subsection (1)(a), the Compliance Committee must provide an opportunity for comment to both the party bringing a grievance under section 6(c) and the relevant covered entity against whom the grievance is brought.

(3) In an adjudication conducted under subsection (1)(b), the Compliance Committee must provide an opportunity for comment to both the party bring a complaint of reprisal under section 39(1)(c) and the relevant covered entity or the subsidiary of a covered entity against whom the complaint of reprisal is brought.

(4) The Compliance Committee may choose to remain seized of a matter as it sees fit.

(5) A panel referred to in subsection (1) from the Compliance Committee may refer the matter for mediation if the panel is satisfied that the issues in relation to the request may be appropriately resolved by mediation.

(6) A member of the Compliance Committee may not join a panel under subsection (1), if a reasonable and right minded individual, applying themselves to the question and obtaining thereon the required information, would hold a reasonable apprehension that the member is in any way biased with respect to the review.

(7) The Chairperson may make rules of procedure governing the practice and procedure before reviews conducted by the Compliance Committee.

(8) The Chairperson shall make a copy of the rules of procedure available to each party to the review.

## **Remedies**

**14 (1)** At the conclusion of a review conducted by the Compliance Committee under section 13(1), the Compliance Committee shall dismiss the complaint if the member or panel finds that the complaint is not substantiated.

(2) If a review of the investigation by the Compliance Committee carried out under section 13(1) finds substantial non-compliance from the guidelines established by the Ombudsperson under section 6(a) or reprisal under section 38(1), the Compliance Committee may recommend an order, as may be appropriate, to

(a) award damages to the party that brought a grievance under section 6(c) or a complaint of reprisal under section 39(1)(c);

(b) apply for an injunction under section 44 of the *Federal Courts Act* to order a party to cease the activities constituting the subject of the grievance under section 6(c) or

complaint of reprisal under section 39(1)(c) to the extent necessary to alleviate the grievance or complaint of reprisal;

(c) direct the covered entity to cease the practice complained of and take measures, in consultation with the Ombudsperson, to redress the practice complained of and certify that they will undertake serious efforts to prevent the same or a similar practice from occurring in future.

(3) The Compliance Committee shall make a decision in writing in respect of the review and send a copy of its decision with the reasons for it to the party that brought the grievance or complaint of reprisal and the relevant covered entity against whom the grievance or complaint of reprisal is brought.

(4) Every person or covered entity that fails to comply with an order made under subsection (2) is guilty of an offence punishable on summary conviction and liable to a fine of not more than \$2,000,000, subject to subsection (2).

### **Division III: General**

#### **Alternate Proceedings**

**15 (1)** Nothing in this Act precludes a party from bringing an action to a court of inherent jurisdiction on any matter.

(2) In the event that a party brings parallel proceedings in a court on a matter brought to the Ombudsperson under section 6(c) or to the Compliance Committee under section 39(1)(c), the Ombudsperson may stay its own investigation or the Compliance Committee may cease its review or adjudication, as the case may be.

(3) The Ombudsperson must provide any findings of an investigation under section 6(d) and (i) of this Act to a court, if ordered to do so.

(4) A party can only be awarded damages or other remedies on the same set of facts from either the Ombudsperson or the judicial system, but not both.

#### **Ombudsperson Procedure**

##### **Notice**

**16 (1)** A party under Ombudsperson investigation according to section 6(d) and (i) of this Act must be notified at least 14 days prior to the commencement of the investigation.

(2) A party under Compliance Committee review according to section 13(1) of this Act, as well as the individual or group lodging a grievance under section 7 or a complaint of reprisal under section 39(1)(c) of this Act and, at the inquiring panel's discretion, any other interested party, must be notified at least 14 days prior to the commencement of the review.

## **Hearing**

**17** A covered entity under Ombudsperson investigation according to section 6(d) of this Act has the right to make written submissions with respect to the matter being investigated and have these submissions considered by the Ombudsperson, who will issue a written response within 120 days.

## **Compliance Committee Review Procedure**

### **Oral Hearing**

**18 (1)** The Compliance Committee shall give all parties to whom notice has been given under section 16(2) a full and ample opportunity, in person or through counsel, to appear at the review, present evidence and make representations.

### **Power to determine questions of law or fact**

(2) In the course of hearing and determining any matter under review, the panel may decide all questions of law or fact necessary to determine the matter.

### **Additional powers**

(3) In relation to a hearing of the review, the panel may

(a) in the same manner and to the same extent as a superior court of record, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce any documents and things that the panel considers necessary for the full hearing and consideration of the complaint;

(b) administer oaths;

(c) subject to the limitations in subsections (4) and (5), receive and accept any evidence and other information, whether on oath or by affidavit or otherwise, in a manner the panel sees fit, whether or not that evidence or information is or would be admissible in a court of law;

(d) lengthen or shorten any time limit established by the rules of procedure; and

(e) decide any procedural or evidentiary question arising during the hearing.

#### **Limitation in relation to evidence**

(4) The panel may not admit or accept as evidence anything that would be inadmissible in a court by reason of any privilege under the law of evidence.

#### **Witness fees**

(5) Any person summoned to attend the hearing is entitled in the discretion of the panel to receive the same fees and allowances as those paid to persons summoned to attend before the Federal Court.

#### **Enforcement of Order**

(6) An order under section 14 may, for the purpose of enforcement, be made an order of the Federal Court by following the usual practice and procedure or by the Compliance Committee filing in the Registry of the Court a copy of the order certified to be a true copy.

#### **Appeal to Federal Court of Appeal**

**19** (1) An appeal lies from a decision or order of the Ombudsperson or Compliance Committee to the Federal Court of Appeal on a question of law or jurisdiction where leave to appeal is obtained from that Court.

(2) An application for leave to appeal must be made within thirty days after the release of the decision or order sought to be appealed.

(3) No appeal lies after leave has been obtained under subsection (1) unless it is entered in the Federal Court of Appeal within sixty days from the making of the order granting leave to appeal.

(4) The Compliance Committee is entitled to be represented by counsel or otherwise on the argument of an appeal at the Federal Court of Appeal.

**20** Except as provided in this Act, decisions and orders of the Ombudsperson and the Compliance Committee shall be considered final and conclusive.

## **Part II: Reporting**

### **Application**

**21** (1) Subject to subsection (2), Sections 22 to 25 apply to any covered entity

(a) with an annual global turnover not less than an amount prescribed by the Minister in the Regulations; or

(b) that controls a corporation or a trust, partnership or other unincorporated organization with an annual global turnover not less than an amount prescribed by the Minister in the Regulations.

(2) Sections 22 to 25 apply to any covered entity

(a) in Canada or elsewhere, regardless of that entity's annual turnover, engaged in the commercial development of

- (i) Gas;
- (ii) Oil;
- (iii) Minerals;
- (iv) Bricks;
- (v) Sugarcane;
- (vi) Cotton;
- (vii) Coffee;
- (viii) Tobacco;
- (ix) Cattle;
- (x) Fish;
- (xi) Garments; or
- (xii) Rice; or

(b) that controls a covered entity engaged in the commercial development of those goods described in sections 21(2)(a)(i) to (xii), in Canada or elsewhere, regardless of the entity's annual turnover;

(3) No covered entity is required to comply with sections 22 to 25 with respect to the financial year in progress on the day sections 22 to 25 enter into force or with respect to any previous financial year.

(4) For the purposes of subsection (1) global turnover shall include

- (a) the turnover of that covered entity; and
- (b) the global turnover of any corporation or a trust, partnership or other unincorporated organization that the covered entity controls.

### **Supply Chain Questionnaire**

**22** (1) The Ombudsperson shall create a supply chain questionnaire to be completed by any covered entity within the criteria in section 21 of this Act.

(2) The purpose of the questionnaire referred to in subsection (1) is to raise awareness about, prevent, identify, and remediate the following practices in the supply chains of covered entities:

- (a) forced labour;
- (b) child labour; and
- (c) human trafficking.

(3) The questionnaire referred to in subsection (1) shall include questions regarding

- (a) the covered entity's structure, its business and its supply chain;
- (b) the covered entity's policies in relation to the practices identified in subsection (2);
- (c) the covered entity's due diligence processes in relation to the practices identified in subsection (2) in its supply chains;
- (d) the parts of the covered entity's business and supply chains where practices identified in subsection (2) are taking place, and the steps the covered entity has taken to assess and manage that risk;
- (e) the steps the covered entity has taken to eliminate the practices identified in subsection (2) in elements of the covered entity's supply chain apart from first-tier suppliers;

- (f) the training available to the covered entity's staff on the practices identified in subsection (2);
- (g) the procedures to manage disclosures that the covered entity must establish under section 32(1) of this Act;
- (h) the disclosures received by the internal disclosure officer and the outcome of investigations under section 35 of this Act;
- (i) the communication of information required under subsection 30(1)(d) of this Act; and
- (j) any other question deemed relevant by the Ombudsperson.

(4) The questions referred to in subsection (3) shall be answerable in a yes or no format.

### **Supply Chain Statement**

**23** (1) Every covered entity within the criteria in section 21 must, not later than 150 days after the end of each financial year of operation, provide the Ombudsperson with a supply chain statement.

(2) A covered entity's supply chain statement shall include responses to all sections of the supply chain questionnaire issued by the Ombudsperson under section 22.

(3) A covered entity's supply chain statement shall include an addendum that is a statement in addition to the questionnaire of the steps the covered entity has taken during the financial year to address the practices identified in section 22(2) of this Act.

(4) The supply chain statement addendum shall disclose to what extent, for purposes of the supply chain statement, the covered entity:

- (a) evaluated its own supply chains to identify and certify the companies and individuals in its supply chains;
- (b) addressed the risks of the practices listed in section 22(2) of this Act, including a description of the methodology the covered entity uses to identify the companies and individuals in its supply chains;
- (c) used a third party to identify the companies and individuals in its supply chains;
- (d) used a third party to identify the risks of the practices listed in section 22(2) of this Act.

(e) assesses and manages risks related to the presence of labour brokers or third-party recruiters in its supply chain;

(f) conducts audits of suppliers to evaluate supplier compliance with the covered entity's policies for the practices referred to section 22(2) of this Act. The addendum shall include a description of the audit methodology and the frequency and timeline of audits. The addendum shall specify if the audits are independent and unannounced;

(g) requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding the practices listed in section 22(2) of this Act of the country or countries in which they are doing business. The addendum shall include a description of the certification requirement and the consequences for violating it;

(h) maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding the practices referred to in section 22(2). The addendum shall include a description of internal accountability procedures, a description of who is responsible for monitoring compliance, and a description of any mechanisms in place to help workers in the supply chain understand the covered entity's labour requirements;

(i) provides employees and management, who have direct responsibility for supply chain management, training on the practices referred to in section 22(2), particularly with respect to mitigating risks within the supply chains of products; and

(j) any other activity or information that the covered entity deems relevant.

(5) A covered entity shall submit a supply chain statement to the office of the Ombudsperson for each financial year of the covered entity's operation.

### **Supply Chain Statement Approval**

**24** (1) If the covered entity is a corporation, its supply chain statement must be approved by the board of directors, or equivalent management body, and signed by a director, or equivalent.

(2) If the covered entity is a limited liability partnership, a supply chain statement must be approved by the members and signed by a designated member.

(3) If the covered entity is a limited partnership the supply chain statement must signed by a general partner if he or she is a natural person, or by a member of the Board of Directors, if the general partner is a corporation.

(4) If the covered entity is any other kind of partnership the supply chain statement must be signed by a partner.



(5) If the covered entity is any other unincorporated organization, the supply chain statement must be signed by an authorized signatory.

### **Supply Chain Statement Publication**

**25** (1) If a covered entity operates or otherwise has a website, it must

- (a) publish its annual supply chain statement on its primary website; and
- (b) include a link to the supply chain statement in a prominent place on that website's homepage.

(2) If the covered entity does not have a website, it must provide a copy of the supply chain statement to anyone who makes a written request within 30 days, beginning with the day on which the request is received and ending at 11:59 on the 30<sup>th</sup> day.

## **Part III: Duty of Care**

### **Applicability**

**26** (1) Sections 27 and 28 apply to any covered entity with a global turnover not less than an amount prescribed by the Minister in the Regulations.

(2) For the purposes of subsection (1), global turnover shall include

- (a) the turnover of that covered entity; and
- (b) the turnover of any corporation or a trust, partnership or other unincorporated organization that the covered entity controls.

### **Duty of Care**

**27** (1) A covered entity within the criteria in section 26 owes a duty of care that is reasonable in the circumstances to see that persons in its supply chain are reasonably free from the following practices while associated with the covered entity's supply chain:

- (a) forced labour;
- (b) child labour; and

(c) human trafficking.

(2) In determining the appropriate standard of care owed by a covered entity to persons associated with its supply chain, the judge must consider

(a) the strength of business relations between the covered entity and the employer of the person, if the person to whom the duty is owed is not directly employed by the covered entity or its subsidiary;

(b) the reasonable foreseeability of the person being a victim of the practices listed in subsection (1);

(c) the scale and complexity of the supply chain in relation to the resources available to the covered entity;

(d) the contribution of a covered entity to an increased incidence of the practices listed in subsection (1);

(e) the guidelines outlined by the Ombudsperson in section 6(a) of this Act with respect to the practices listed in subsection (1);

(f) the supply chain statement completed by the covered entity under section 23 of this Act; and

(g) any other factors pertinent to the relationship between the covered entity and the person.

### **No Alteration to Existing Duties**

**28** Nothing in this Act relieves a covered entity in any particular case from any higher liability or any duty to show a higher standard of care than is incumbent on the covered entity by virtue of any enactment or rule of law imposing special liability or standards of care on particular classes of persons.

## **Part IV: Whistleblower Protection**

### **Division 1: General**

#### **Subsidiary Relationships**

**29 (1)** For the purposes of this Part, a corporation, limited liability partnership, limited partnership or partnership is a subsidiary of a covered entity if

(a) it is controlled by:

(i) the covered entity,

(ii) the covered entity and one or more corporations, limited liability partnerships, limited partnerships or partnerships controlled by the covered entity, or

(iii) 2 or more corporations, limited liability partnerships, limited partnerships or partnerships controlled by the covered entity, or

(b) it is a subsidiary of a subsidiary of the covered entity.

(2) For the purposes of this section, a corporation is controlled by a covered entity if:

(a) shares of the corporation are held, other than by way of security only, by the covered entity, or are beneficially owned, other than by way of security only, by the covered entity, and

(b) the votes carried by the shares mentioned in paragraph (a) are sufficient, if exercised, to elect or appoint a majority of the directors of the corporation.

### **Information about this Part to be communicated**

**30** (1) An officer must ensure that the following information is made available through training for all employees of the covered entity for which the officer is responsible:

(a) information about this Part of this Act;

(b) information about how to make a disclosure under sections 35, 36 and 37 of this Act;

(c) Information about the confidentiality protections available for a Whistleblower under section 33 of this Act; and

(d) information about the definition of reprisal under section 38 of this Act, and how a Whistleblower may make a complaint of reprisal under section 39 of this Act.

### **Internal Disclosure Officer**

**31** (1) An officer must designate at least one senior official of the covered entity to be an internal disclosure officer to receive and investigate disclosures by Whistleblowers.

(2) A different senior official may be designated under subsection (1) for each of the following:

- (a) the receipt of a disclosure;
- (b) the investigation of a disclosure.

### **Procedures to manage disclosures**

**32** (1) Every officer must establish procedures to manage disclosures to the internal disclosure officer by Whistleblowers;

(2) The procedures established under subsection (1) must include procedures that:

- (a) assess the risk of reprisals against whistleblowers;
- (b) receive and review disclosures and, in respect of disclosures, set time periods for action to be taken in accordance with sections 35(2) and (3);
- (c) ensure the confidentiality of information collected in relation to disclosures and investigations;
- (d) protect the confidentiality of identifying information of the Whistleblower in accordance with section 33;
- (e) refer the disclosure to another appropriate authority if that authority has jurisdiction in respect of the disclosure;
- (f) investigate disclosures;
- (g) investigate other wrongdoings that may arise in the course of an investigation of the disclosure;
- (h) report the outcomes of investigations, including the following:
  - (i) a finding of child labour and, or forced labour, if any;
  - (ii) reasons to support the finding of child labour and, or forced labour;
  - (iii) any recommendations to address the finding; and
- (j) include any other procedural matter prescribed by regulation.

## **Protection of Whistleblower's Personal Information<sup>2</sup>**

**33** (1) A person authorized to receive disclosures from Whistleblowers must protect the Whistleblower's personal data and any data that may be used to discover the identity of the Whistleblower, unless the Whistleblower agrees to reveal such personal data in accordance with the law regulating personal data protection.

(2) A person in subsection (1) must, at the time of receiving a disclosure from a Whistleblower, notify the Whistleblower that the Whistleblower's identity may be revealed if an investigation into a disclosure cannot be reasonably performed without revealing the identity of the Whistleblower, and notify the Whistleblower of the safeguards available to participants in criminal proceedings.

(3) Where it is necessary to reveal the identity of the Whistleblower in the course of an investigation into a disclosure, the person in subsection (1) must notify the Whistleblower of this fact before revealing the Whistleblower's identity.

(4) A failure to comply with subsections (1), (2) or (3) is actionable as a legally enforceable right by a Whistleblower if he or she suffers any losses by reason of the failure to comply.

## **Content of Disclosure**

**34** (1) A Whistleblower may make a disclosure in writing or orally.

(2) The disclosure in subsection (1) must include sufficient information for a person receiving the disclosure to reasonably understand the allegations of a covered entity's past or current use of forced labour or child labour, or the risk of forced labour or child labour being used by a covered entity or a subsidiary of a covered entity.

## **Division 2: Making Disclosures<sup>3</sup>**

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<sup>2</sup> A lack of confidentiality protections tends to be one of the main factors that discourage whistleblowers from coming forward. Strong confidentiality protections are critical for an effective whistleblower legislation.

<sup>3</sup> In order to maximize the free flow of information, whistleblowers should not be limited to a single disclosure mechanism. Best practices in whistleblower legislation establish multiple disclosure mechanisms from which whistleblowers can choose (See: Ireland PDA, ss 6-10; Serbian Whistleblower Law, Art. 12-19).

A requirement of good faith in sections 35, 36 and 37 have been intentionally omitted. Instead of requiring Whistleblowers to make disclosures in good faith, sections 35, 36 and 37 only require Whistleblowers to have a reasonable belief that their information could show that forced labour or child labour has been, is being, or is likely to be used by a covered entity or its foreign subsidiary.

## Internal Disclosure

**35 (1)** If a Whistleblower reasonably believes that he or she has information that could show that forced labour or child labour has been, is being or is likely to be used by a covered entity or a subsidiary of a covered entity, the Whistleblower may make a disclosure to an internal disclosure officer in section 31 [*internal disclosure officer*].

(2) Upon receiving a disclosure in subsection (1), internal disclosure officer must immediately act upon the disclosures and at the latest within 15 days of receiving a disclosure.

(3) The internal disclosure officer must, within 15 days of the conclusion of an investigation, notify the Whistleblower of the outcome of the investigation and provide the Whistleblower with a copy of the report on the investigation.

(4) The internal disclosure officer must, upon the Whistleblower's request, provide the Whistleblower with information in writing about the progress of any and all actions undertaken in the course of the investigation, and enable the Whistleblower to have access to the case files and participate in actions in the course of the investigation.

(5) Upon receiving the report on the investigation, the Whistleblower may submit comments on the report to the Internal disclosure officer within 15 days of receiving the report.<sup>4</sup>

(6) The internal disclosure officer shall maintain and make available to the public:

(a) reports on the investigations carried out by the internal disclosure officer; and

(b) the Whistleblower's comments on the report on the investigation.

## External Disclosure

**36 (1)** If a Whistleblower reasonably believes that he or she has information that could show that forced labour or child labour has been, is being or is likely to be used by a covered entity or a subsidiary of a covered entity, the Whistleblower may make a disclosure to the Ombudsperson appointed under this Act

(2) Upon receiving a disclosure in subsection (1), the Ombudsperson must immediately act upon the disclosures and at the latest within 15 days of receiving a disclosure.

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<sup>4</sup> This provision enfranchises the whistleblower with the last word on the results of an investigation, and is intended to prevent cynical manipulation of investigation reports and to generally improve the quality of the public record.

(3) The Ombudsperson must, within 15 days of the conclusion of an investigation, notify the Whistleblower of the outcome of the investigation and provide the Whistleblower with a copy of the report on the investigation.

(4) The Ombudsperson must, upon the Whistleblower's request, provide the Whistleblower with information in writing about the progress of any and all actions undertaken in the course of the investigation, and enable the Whistleblower to have access to the case files and participate in actions in the course of the investigation.

(5) Upon receiving the report on the investigation, the Whistleblower may submit comments on the report to the Ombudsperson within 15 days of receiving the report.

(6) The Ombudsperson shall maintain and make available to the public:

(a) reports on the investigations carried out by the internal disclosure officer; and

(b) the Whistleblower's comments on the report on the investigation.

### **Public Disclosure**

**37** (1) If a Whistleblower reasonably believes that he or she has information that could show that forced labour or child labour has been, is being or is likely to be used by a covered entity or a subsidiary of a covered entity, the Whistleblower may make a disclosure to the public.

(2) For the purposes of this section, public disclosures include disclosing information:

(a) to the media;

(b) by means of the Internet;

(c) at a public gathering;

(d) or in any other manner that information may be made public.

### **Division 3: Protections and Remedies**

#### **Protection from Reprisals<sup>5</sup>**

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<sup>5</sup> Protection against reprisals is recognized as one of the most important features of effective whistleblower legislation, as fear of reprisal is a common, real, and substantial impediment for many potential whistleblowers.

**38 (1)** A covered entity or the subsidiary of a covered entity must not threaten, take, or counsel or direct another person to perform an action or omit to perform an action against an individual that would place the individual at a disadvantage in relation to:

- (a) hiring procedure;
- (b) obtaining the status of an intern or volunteer;
- (c) work outside of formal employment;
- (d) education, training, or professional development;
- (e) promotion at work, being evaluated, obtaining or losing a professional title;
- (f) disciplinary measures and penalties;
- (g) working conditions;
- (h) termination of employment;
- (i) salary and other forms of remuneration;
- (j) share in the profits of the covered entity;
- (k) disbursement of bonuses or incentivizing severance payments;
- (l) allocation of duties or transfer to other positions;
- (m) failing to take measures to provide protection from harassment by other persons;
- (n) mandatory medical examinations or examinations to establish fitness for work;
- (o) a business dealing;
- (p) any other measures prescribed by regulation;

by reason that the individual

- (q) made, is making, or planning to make a disclosure under sections 35, 36 or 37;
- (r) assisted, is assisting, or planning to assist another Whistleblower to make a disclosure under sections 35, 36 or 37; or



(s) cooperated, is cooperating, or plans to cooperate with an investigation undertaken by the Internal Disclosure Officer or the Ombudsperson in respect of a disclosure under sections 35, 36 or 37.

### **Complaint of Reprisals**

**39 (1)** An individual who suffered a loss from a reprisal action taken against him or her by reason that the individual performed an action under sections 38(1)(q), (r) or (s) may:

(a) seek a civil remedy;<sup>6</sup> or

(b) make a complaint of reprisal to the Compliance Committee.

(2) A civil society organization may, by reason that a covered entity performed a reprisal action against an individual under section 38, may:

(a) seek a civil remedy, or

(b) make a complaint of reprisal to the Compliance Committee.

(3) A person may be entitled to relief in subsection (1) or (2) if the person establishes a *prima facie* case that the individual's action under sections 38(1)(q), (r) or (s) was a contributing factor in the reprisal action taken against that individual.

(3) A person in subsection (3) shall not be entitled to relief in subsection (1) or (2) if the covered entity establishes, on a balance of probabilities, that it would have taken the same reprisal action in the absence of such a disclosure.<sup>7</sup>

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<sup>6</sup> Best practice in whistleblower legislation provide whistleblowers with direct access to the court and administrative systems. Conferring a right to directly access the court and administrative system allows whistleblowers to benefit from interim reliefs through the court system and to recuperate losses they have incurred.

<sup>7</sup> Reversing the burden of proof in this manner has been identified as a best practice in whistleblower laws, and has been recognized to be the fair and just method of assessing the merits of reprisal complaints. Lowering the burden of proof for reprisal complaints has led to higher number of successful complaints in both the UK and US.

## **Part V: General**

### **Division I: Minister's Powers**

#### **Agreement with another jurisdiction**

**40** The Minister may enter into an agreement or arrangement with the government of another jurisdiction relating to the administration or enforcement of this Act or that jurisdiction's reporting requirements.

#### **Disclosure — powers, duties and functions**

**41** The Minister may disclose information obtained under this Act for the purpose of exercising powers or performing duties and functions under this Act.

#### **Delegation**

**42** The Minister may delegate to any person or body any power, duty or function conferred on the Minister under this Act except the power to delegate under this section.

#### **Limitation Period**

**43** Proceedings under this Act may be instituted within, but not after, five years after the time when the subject matter of the proceedings arose.

#### **Regulations**

**44** The Minister may make regulations for carrying out the purposes and provisions of this Act and in particular, but without restricting the generality of the foregoing, may make regulations

- (a) prescribing the turnover threshold for the applicability of sections 22 to 25;
- (b) prescribing the turnover threshold for the applicability of sections 27 and 28;
- (c) to determine the total turnover of a covered entity;
- (d) respecting the circumstances in which any of the provisions of this Act do not apply to entities;
- (e) prescribing procedures to be followed in the conduct of an Ombudsperson investigation under section 8;

(f) prescribing the circumstances in which a covered entity is controlled by another covered entity; and

(g) prescribing anything that is required or authorized by this Act to be prescribed;

## **Consequential Amendments**

### ***Export Development Act***

**45** The *Export Development Act* is amended by adding the following after section 10.1:

#### **Transparency in Supply Chains**

10.2 (1) In the exercise of its powers under subsection 10(1.1), the Corporation shall not enter into, continue or renew a transaction unless the activity in question is consistent with the guidelines issued under section 6(a) of the *Transparency in Supply Chains Act*.

#### **Continued compliance**

(2) Continued compliance with the guidelines issued under section 6(a) of the *Transparency in Supply Chains Act* shall be a condition of any contract entered into by the Corporation.

### ***Department of Foreign Affairs and International Trade Act***

**46** Section 10 of the *Department of Foreign Affairs and International Trade Act* is amended by adding the following after subsection (3):

#### **International Commercial Activities**

(4) In carrying out his or her duties and functions under paragraphs 2(d) and (e) and 3(a), the Minister shall ensure that these activities are consistent with the guidelines issued under section 6(a) of the *Transparency in Supply Chains Act*.

#### **Undertaking**

(5) For greater certainty, with the exception of ordinary consular services available to all Canadian citizens, no undertaking made through a program developed by the Minister in the exercise of his or her powers under this section shall promote or support activities that are inconsistent with the guidelines issued under section 6(a) of the *Transparency in Supply Chains Act*.

### ***Canada Pension Plan Investment Board Act***

**47** Section 36 of the *Canada Pension Plan Investment Board Act* is renumbered as subsection 36(1) and is amended by adding the following:

#### **Consideration**

(2) In taking into consideration the standards and procedures that a person of ordinary prudence would exercise, every investment manager who invests the assets of the Board shall take into consideration the provisions of section 6(a) of the *Transparency in Supply Chains Act*.

#### **Inconsistent activities**

(3) Every investment manager who invests the assets of the Board shall ensure that the assets are not invested in any entities whose activities have been found to be inconsistent with the guidelines referred to in section 6(a) of the *Transparency in Supply Chains Act*.

### ***Department of Public Works and Government Services Act***

**48** The *Department of Public Works and Government Services Act* is amended by adding the following after subsection 7(d):

#### **Consideration**

(e) ensure that the functions in section 6 of this Act are completed with entities which have completed the supply chain statement under section 23 of the *Transparency in Supply Chains Act*.

#### **Coming into force**

**49** This Act comes into force on January 1, 2020.