

**MODEL Order in Council pursuant to the Inquiries Act for
the
Canadian Ombudsperson for Responsible Business Enterprise (CORE)**

Whereas the Government of Canada is committed to ensuring Canadians everywhere can have confidence in Canadian companies and trust that international trade and investment is working for all;

Whereas the Government of Canada expects Canadian companies operating abroad to respect human rights and all applicable laws, and to meet or exceed widely-recognized international standards for responsible business conduct;

Whereas groups and individuals, within and outside Canada, have made serious allegations of human rights, and labour rights harms connected with the activities of Canadian companies operating outside Canada; and

Whereas the Government of Canada has committed to establishing a Canadian Ombudsperson for Responsible Enterprise (“CORE”) to inquire into and address allegations of human rights abuses connected with the activities of Canadian companies operating outside Canada;

Whereas, in relation to allegations of harms connected to Canadian corporate activity outside Canada, the Government of Canada is committed to increasing transparency and accountability; promoting gender-sensitivity; promoting remedies for harms while also ensuring systemic change in order to prevent future harm; and promoting meaningful participation of communities in decisions affecting them;

Whereas the United Nations Guiding Principles on Business and Human Rights, unanimously endorsed by the UN Human Rights Council in 2011, call on States to “ provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse”;

Whereas the Government of Canada does not intend to deprive any person of the right to bring a legal action in a court in any jurisdiction in Canada against an entity or person for harms suffered outside Canada;

And whereas the Government of Canada has committed to creating the CORE, addressing complaints relating to the mining, oil, gas and garment sectors, as a Commission of Inquiry as an interim step towards the creation of a statutory body with jurisdiction over a growing range of sectors;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Prime Minister, directs that a commission (“the Commission”) do issue, for the period beginning on January 1, 2019, and continuing until it is replaced by a permanent statutory body, under Part I of the *Inquiries Act* and under the Great Seal of Canada, appointing XXX as the Commissioner, to be known as the Ombudsperson, to inquire into allegations of harm connected with the operations of Canadian companies operating outside Canada.

Such Commission must:

1. Direct the Commissioner to receive complaints by any person, organization, or group of individuals, resident in Canada or elsewhere, at any time, regarding a harm that may be the subject of inquiry under this Order, and in relation to those complaints;
 - i. take any and all necessary steps, on request of a complainant, to protect the identity, personal information, and in appropriate circumstances, the testimony, of one or more complainants;
 - ii. identify one or more subjects of the complaint;

- iii. accept complaints relating to events that occurred at any time, including at any time prior to the issue of the Commission;
- 2. Direct the Commissioner to inquire into every complaint in which
 - 1) One or more of the subjects
 - i. Is listed on a stock exchange in Canada; or
 - ii. Is incorporated in any jurisdiction in Canada; or
 - iii. Has its principal place of business in Canada; or
 - iv. Is a subsidiary, or an affiliate, of an entity that
 - 1. Is listed on a stock exchange in Canada; or
 - 2. Is incorporated in any jurisdiction in Canada; or
 - 3. Has its principal place of business in Canada; or
 - v. Receives, or has received, financial support, insurance; subsidy, promotion, partnership or protection from the Government of Canada or any of its Departments or Agencies; or
 - vi. Is a significant supplier to a retailer or brand selling garments in Canada

AND
 - 2) The complaint alleges an infringement, or a significant risk of infringement, of international human rights, and labour standards, including the nine core human rights treaties, the United Nations Declaration on the Rights of Indigenous People (UNDRIP), eight core International Labour Organization conventions, ILO 169, OECD Convention on Bribery, and the Geneva Convention, UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, (“harm(s)”) outside Canada;

AND
 - 3) The complaint alleges that the harm(s) were, by act or omission, caused or contributed to by one or more subjects, or by a third party with which one or more subjects has or had a material contractual relationship;

AND
 - 4) The Commissioner does not believe that
 - i. the harm(s) alleged in the complaint are not serious; or
 - ii. the complaint is frivolous or vexatious or is not made in good faith
- 3. Authorize the Commissioner to inquire into an allegation on his or her own motion, without a complaint, where she or he has reason to suspect that a harm may be the subject of inquiry under this Order;
- 4. Direct the Commissioner to issue a Notice of Inquiry to the subjects, and to the public;
- 5. Authorize the Commissioner, when the complainant and the subjects agree, and in appropriate circumstances, to make alternative dispute resolution (“ADR”) services available, including mediation and joint fact finding;
- 6. Direct the Commissioner, in assessing appropriate circumstances for ADR, to have regard to:
 - 1) The nature of the harms alleged, recognizing that ADR is not appropriate in all cases, and is specifically not appropriate in cases involving sexual violence;
 - 2) The purposes and objectives of the CORE, in particular, promoting transparency and accountability, and ensuring both remedies, and systemic change to prevent future harm;
 - 3) Any reason to suspect that the destruction of evidence relevant to an investigation may occur;
- 7. Authorize the Commissioner to conduct independent investigations into complaints when:
 - 1) The circumstances are not appropriate to ADR;
 - 2) The complainant or the subjects do not agree to ADR, or withdraw their agreement after commencement of ADR;
 - 3) There are outstanding issues of public importance not resolved through ADR;
- 8. Direct the Commissioner to review any settlement reached through ADR, taking into account the purposes of the CORE in promoting respect for human rights and labour rights; transparency, accountability; gender sensitivity, remedy and ensuring systemic change to prevent future harm

- 1) Direct the Commissioner, when reviewing settlements, to review both the substantive content and the fairness of the procedures
9. Authorize the Commissioner, where the law of a foreign state does not prohibit it, to gather information in furtherance of his or her investigation, in a foreign state
 - 1) Where an investigation requires the Commissioner to gather information or meet with individuals in a foreign jurisdiction, he or she will inform the foreign government of his or her meeting and information-gathering activities;
10. Authorize the Commissioner, when gathering information in a foreign jurisdiction, to endeavour to enter into legal assistance agreements, and to make use of letters rogatory and letters of request, exercising the powers of a Commissioner under s. 5 of the Inquiries Act
11. Authorize the Commissioner, when he or she is satisfied on a balance of probabilities, that the evidence – written or oral – of any witness contains or may contain information that is:
 - i. personal information, within the meaning of s. 3 of the *Privacy Act*, or in any provincial or territorial privacy act; or
 - ii. third party information within the meaning of s. 20 (1) of the *Access to Information Act*;to conduct the examination of the witness “in-camera”
12. Direct the Commissioner to not disclose publicly or in any report, any personal information, or third party information, unless, in the opinion of the Commissioner, the public interest in the disclosure outweighs any invasion of privacy that could result from the disclosure;
13. Direct the Commissioners to make any disclosure referred to in paragraph (12) in such a way as to minimize, to the greatest extent possible, any invasion of privacy that could result from the disclosure;
14. Authorize the Commissioner, when he or she has reason to suspect that the evidence – written or oral – of any witness might endanger the safety of an individual, that individual, or a group of individuals, or deems it necessary to protect a witness from public exposure, she/he may declare any part of the investigation to be *in camera*
15. Direct the Commissioner to not disclose publicly or in any report, any information which may endanger or expose an individual or group of individuals, as referenced in paragraph (14)
16. Direct the Commissioner to conduct her or his duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization;
17. Direct the Commissioner to disclose to the Attorney General of Canada information relating to the commission of an offence against a law of Canada if there is evidence of such offence;
18. Authorize the Commissioner to develop specialized processes to protect and consider the needs of complainants, particularly in investigating allegations of sexual misconduct, drawing on best practices internationally;
19. Authorize the Commissioner to suspend, discontinue or not initiate an inquiry where a proceeding is or has been initiated in a court in any jurisdiction in Canada, involving the same parties, on a matter substantially similar to the matter of the investigation
 - 1) The Commissioner shall not suspend or decline to initiate an investigation where there is reason to suspect that the purpose of the litigation in a court in any jurisdiction in Canada is to interfere in the Ombudsperson investigation
20. Direct the Commissioner to issue a public report of all of his or her inquiries, containing her or his findings and opinions on the harms alleged, within a reasonable time after the conclusion of an investigation.
21. Direct the Commissioner, in forming and reporting on his or her opinion regarding an alleged infringement of human rights, to have reference to the practice of competent international bodies, and to the UN Guiding Principles on Business and Human Rights, and may also consider other international norms, including
 - 1) OECD Guidelines on Multinational Enterprises;
 - 2) OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas;
 - 3) IFC Performance Standards;

- 4) Voluntary Principles on Security and Human Rights;
 - 5) Sustainability reporting guidelines of GRI; and
 - 6) Any international codes of conduct or corporate codes of conduct a company (or its affiliate) has signed on to or adopted.
22. Direct the Commissioner to make recommendations to companies, governments, and other actors, including recommendations for a specific remedy, apology, withdrawal of government support from a company or project, and changes to law and government policy regarding the activities of Canadian companies outside Canada.
 23. Authorize the Commissioner to attach timelines to recommendations; and to institute a process for follow up on recommendations, including follow-up reports.
 24. Authorize the Commissioner to monitor the implementation of recommendations.
 25. Direct the Commissioner to produce an Annual report to Parliament, including the recommendations resulting from investigations, and status of recommendations.
 26. Authorize the Commissioner, where a recommendation to withdraw government support from a company or project is made, and the relevant agency has not followed the recommendation, to seek a formal decision, and reasons for an agency's refusal to follow a recommendation to cease support, and in appropriate circumstances, to seek judicial review of the reasons in Federal Court;
 27. Authorize the Commissioner to provide financial assistance to complainants in obtaining legal counsel for mediation in appropriate circumstances;
 28. Direct the Commissioner to issue a public summary of an inquiry, including a report on the outcome where mediation has resulted in a settlement

Glossary for Terms of Reference:

- 1) An entity is an "affiliate" of an entity if:
 - i. It is a subsidiary of the entity; or
 - ii. both are subsidiaries of the same entity; or
 - iii. each of them is controlled by the same person
- 2) "control" means that an entity, directly or indirectly:
 - i. owns 20 or more percent of the voting interests in an affiliate or other entity; or
 - ii. ordinarily directs or instructs the conduct of the affiliate or other entity; or
 - iii. alone or in combination with another affiliate of the entity, is empowered through voting interests, or based on an agreement with another party, to elect at least 30 per cent of the Board of Directors of an affiliate; or
 - iv. has the power to cause direction of the management and policies of an entity; or
 - v. determines the salary level or bonus structure for executives or employees of an affiliate or other business entity
- 3) "eight core International Labour Organization Conventions" means:
 1. the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) ;
 2. the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) ;
 3. the Forced Labour Convention, 1930 (No. 29) ;
 4. the Abolition of Forced Labour Convention, 1957 (No. 105) ;
 5. the Minimum Age Convention, 1973 (No. 138) ;
 6. the Worst Forms of Child Labour Convention, 1999 (No. 182) ;
 7. the Equal Remuneration Convention, 1951 (No. 100) ;
 8. the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- 4) "entity" means a corporation or a trust, partnership, joint venture, or other unincorporated organization
 - i. that is engaged in the commercial development of oil, gas or minerals; or
 - ii. that controls a corporation or a trust, partnership, joint venture, or other unincorporated organization that is engaged in the commercial development of oil, gas or minerals [from ESTMA, adapted]

- 5) “foreign state” means any state other than Canada;
- 6) “nine core human rights treaties means”:
 1. the International Covenant on Civil and Political Rights (ICCPR);
 2. the International Covenant on Economic, Social and Cultural Rights (ICESCR);
 3. the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
 4. the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
 5. the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT);
 6. Convention on the Rights of the Child (CRC);
 7. Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW);
 8. Convention on the Rights of Persons With Disabilities (CRPD);
 9. the International Convention for the Protection of All Persons from Enforced Disappearance (CED);
- 7) “person” includes a legal person
- 8) “project” means the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. Nonetheless, if multiple such agreements are substantially interconnected, this shall be considered a project. [from ESTMA guidance]
- 9) “subject of an investigation” means any entity named in a complaint under Part 4; or an entity identified by the Ombudsperson under Part 6, sections 1 or 2;
- 10) An entity is a “subsidiary” of an entity if:
 - i. It is controlled by
 1. That entity;
 2. That entity and one or more entities each of which is controlled by that entity; or
 3. Two or more business organizations, each of which is controlled by that entity; or
 - ii. It is a subsidiary of an entity that is a subsidiary of that Entity