

The Corporate Respect for Human Rights and the Environment Abroad Act¹

Preamble

Whereas business entities may cause adverse human rights impacts through their own activities, or through their business relationships;

Whereas the realities of global supply chains, cross-border trade, investment, communications and movement of people are such that Canadian business entities may cause adverse human rights impacts outside Canada;

Whereas, at present, accountability and remedy in such cases is often elusive, and where legal remedy is obtained, it frequently does not meet the international standard of “adequate, effective and prompt reparation for harm suffered”;

Whereas the right to remedy is a core tenet of the international human rights system, and the need for victims to have access to an effective remedy is recognized in the UN Guiding Principles on Business and Human Rights (UNGPs);

Whereas undertaking human rights due diligence can assist business enterprises to proactively manage potential and adverse human rights impacts, and can assist enterprises in fulfilling their responsibility to respect human rights;

Whereas the prevention of adverse impacts is the main purpose of human rights due diligence;

Whereas ensuring the legal accountability of business enterprises and access to effective remedy for persons affected by such abuses is a vital part of a State’s duty to protect against business-related human rights abuse;

And whereas effective State-based judicial mechanisms are at the core of ensuring access to remedy;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

¹ *This model legislation is the product of extensive research and engagement, within and outside of Canada. It provides a blueprint for the Government of Canada. The model is being released as a draft text in recognition that it may be updated to reflect ever-evolving international best practices. We wish to thank all those who offered their time, advice, and expertise - in particular the members of the CNCA’s expert advisory group, Above Ground and lead drafter Erin Simpson, Landings LLP.*

PART I: INTERPRETATION

1. Interpretation:

- 1) Nothing in this Act should be interpreted to preclude the Attorney General of Canada from prosecuting any entity or individual associated with any entity for any offence under the Criminal Code of Canada or any other Act of any province or jurisdiction in Canada.

2. Definitions

- 1) “Activities” includes actions and omissions
- 2) 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.
- 3) “business relationship” includes an entity’s relationships with business partners, entities throughout its value or supply chain, and any other non-State or State entity directly linked to its business operations, products or services. For greater clarity, and without limiting the generality of the foregoing, relationships with state and non-state security forces, and home-based workers are “business relationships” for purposes of this Act.
- 4) “entity” means a corporation or a trust, or partnership. For greater clarity, a not-for-profit, charity, or trade union is not an “entity” for purposes of this Act.
- 5) 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 entities, each of which is controlled by that entity; or
 - ii. It is a subsidiary of an entity that is a subsidiary of that entity.
- 6) “Commissioner” is the Commissioner provided for in Part XI.
- 7) “Interested person” means:
 - i. a person who is directly affected, or
 - ii. a person who:
 1. has a genuine interest in the issues arising in the case;
 2. presents a reasonable means of the case being brought forward;
 3. does not have a conflict of interest in the outcome of the case.
- 8) “Minister” means the Minister of Justice.
- 9) “Person” means legal person or natural person.

3. Control

- 1) An entity is controlled by a person or another entity if
 - i. Twenty percent or more of the voting interests in the entity are held by or for the benefit of that person or entity, directly or indirectly; or
 - ii. The person or entity ordinarily directs or instructs the conduct of the entity, directly or indirectly; or
 - iii. The person or entity is, alone or in combination with another entity, empowered through voting interests, or based on agreement with another party, to elect at least thirty percent of the board of directors of the entity, directly or indirectly; or

- iv. The person or entity has the power to cause direction of the management and policies of the entity, directly or indirectly; or
- v. The person or entity determines the salary or bonus structure for executives or employees of the entity, directly or indirectly; or
- vi. The person or entity otherwise controls the entity in fact, directly or indirectly;
- vii. The person or entity publicly represents itself as being responsible for or in control of the entity.

PART II: ENABLING AUTHORITIES

- 4. Except as otherwise provided, the Minister of Justice is responsible for the administration of this Act.
- 5. The Governor in Council may make any regulation that is referred to in this Act or that prescribes any matter whose prescription is referred to in this Act.
- 6. The Minister shall cause a copy of each proposed regulation made under this Act to be laid before each House of Parliament, and each House shall refer the proposed regulation to the appropriate Committee of that House.

PART III: PURPOSES

- 7. The purpose of this Act is to prevent, address, and remedy adverse human rights impacts connected to the overseas business activities of entities under this Act.

PART IV: GENERAL PROVISIONS

- 8. Adverse Human Rights Impacts
 - 1) An adverse human rights impact occurs when an action removes or reduces the ability of an individual to enjoy their human rights.
 - 2) Subject to any further additions in the regulations under this Act, “human rights” includes:
 - i. human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment;
 - ii. the rights set out in:
 - 1. The nine core human rights treaties:
 - 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);
2. The United Nations Declaration on the Rights of Indigenous Peoples;
3. International Labour Organization Convention 169, the Indigenous and Tribal Peoples Convention;
4. The 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;
5. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
6. The 8 core international Labour Organization Conventions:
 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);
- 3) The regulations under this Act may provide any further international human rights instruments encompassed by “human rights” for the purposes of this Act.

PART V: APPLICATION

9. Entities:

- 1) An entity is subject to this Act if the entity:
 - i. Is domiciled or ordinarily resident in Canada; or
 - ii. Sells goods or services in Canada and the entity has a resident agent, representative, warehouse, office or place where it carries on its business in any jurisdiction in Canada;

AND

 - iii. The entity is not exempted from application of this Act by the regulations;
- 2) All entities are “reporting entities” unless exempted in the regulations;
- 3) The regulations may exempt entities from application of this Act by sector, revenue, or number of employees.

10. Conflict of Laws:

- 1) Subject to any exception established herein or by regulation, this Act contains overriding mandatory rules that apply to the overseas business activities of entities irrespective of the rules of

Canadian private international law, whether they be found in the common law or established by an Act of a province or Canada.

- 2) Any provision of an agreement or arrangement that contravenes a rule under this Act, or provides inferior rights and protections than those established herein is absolutely null.
- 3) Notwithstanding subsections 1 and 2, nothing in this section shall be construed as affecting any obligation that an entity owes under any domestic or foreign law, contract, or arrangement that holds it to a higher standard than the rules of this Act and its regulations.

PART VI: COMMISSIONER

Appointment of Commissioner

11. Within three months of the coming into force of this Act, the Governor in Council shall appoint an officer to be known as the Commissioner for Human Rights Protection in Business, who shall be responsible for the administration and enforcement of this Act.
12. The Commissioner has all the power of a Commissioner appointed under the *Inquiries Act*.
13. The Commissioner holds office during good behaviour for a term of five years, but may be removed for cause by the Governor in Council.
14. The Commissioner, on the expiration of a first term of office, is eligible to be re-appointed for one further term not exceeding five years. For greater clarity, the Commissioner is eligible for only one re-appointment.
15. The Commissioner shall rank as and have all the powers of a deputy head of a department, shall engage exclusively in the duties of the office of Commissioner under this Act or any other Act of Parliament and shall not hold any other office under Her Majesty for reward or engage in any other employment for reward.
16. The Commissioner shall have expertise and experience in human rights and have knowledge of international best practices in human rights-based approaches and gender-sensitive analysis.

Compensation of Commissioner

17. The Commissioner shall be paid a salary, fixed by Parliament, equal to the salary of a puisne judge of the Federal Court, and is entitled to be paid reasonable travel and living expenses incurred in the performance of duties under this Act or any other Act of Parliament.
18. The provisions of the Public Service Superannuation Act, other than those relating to tenure of office, apply to the Commissioner, except that a person appointed as Commissioner from outside the public service, as defined in the Public Service Superannuation Act, may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the pension plan provided in the Diplomatic Service (Special) Superannuation Act, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Commissioner from the date of appointment and the provisions of the Public Service Superannuation Act do not apply.

Staff

19. Such officers and employees as are necessary to enable the Commissioner to perform the duties and functions of the Commissioner under this Act or any other Act of Parliament shall be appointed in accordance with the Public Service Employment Act.
20. The Commissioner may engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Commissioner to advise and assist the Commissioner and the officers and employees, in the performance of their duties and functions under this Act or any other Act of Parliament and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of such persons.

Delegation

21. The Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitations as the Commissioner may specify, any of the powers, duties or functions of the Commissioner under this Act of Parliament.
22. The Commissioner is authorized to exercise the powers and perform the functions of the Treasury Board that relate to human resources management within the meaning of paras 7(1)(b) and of the Financial Administration Act.
23. The Commissioner shall publish procedures and policies governing the handling of applications to investigate, investigations, and the making of Notices under s. 36.
24. Information-gathering in foreign jurisdictions;
 - 1) Where the law of a foreign state does not prohibit it, the Commissioner may gather information in furtherance of his or her investigation, outside Canada;
 - 2) 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;
 - 3) In gathering information in foreign jurisdictions, the Commissioner shall endeavour to enter into mutual assistance agreements, letters rogatory, or other like legal agreement, with local authorities;
 - 4) For greater clarity, the Commissioner shall not participate in law enforcement activities in any foreign jurisdiction.

PART VII: OBLIGATIONS

Duties to Avoid, Prevent and Address

25. (1) Every entity has a duty to:
 - i) Avoid causing adverse human rights impacts outside Canada through its own activities, and through the activities of its affiliates; and to address such impacts when they occur; AND
 - ii) Prevent adverse human rights impacts outside Canada that are directly linked to its operations, products or services by its business relationships; and to address such impacts when they occur;
- (2) Where an entity contravenes s. 25 (1), it is liable for any injury that results from its contravention, whether it be caused by its own act or omission or that of its affiliate or a person with whom it has a business relationship.

Due Diligence Procedures

26. Subject to any provision in the regulations under this Act, due diligence means taking reasonable measures to:
- 1) Avoid causing adverse human rights impacts outside Canada through its own activities, and through the activities of its affiliates, and to address such impacts when they occur; AND
 - 2) Prevent adverse human rights impacts outside Canada that are directly linked to its operations, products or services by its business relationships, and to address such impacts when they occur.
27. Due diligence procedures shall include:
- 1) Identifying and assessing real and potential adverse impacts;
 - 2) Ceasing and remedying existing adverse impacts;
 - 3) Mitigating risks of adverse impacts;
 - 4) Monitoring the implementation and effectiveness of the measures adopted to address adverse human rights impacts;
 - 5) A mechanism to provide an alert to the entity of possible adverse effects on or risks to human rights;
 - 6) Documenting due diligence efforts.
28. Every entity shall develop and implement due diligence procedures with respect to itself, its affiliates, and its business relationships.
29. In developing and implementing due diligence procedures, entities shall:
- 1) have regard to the intersection of sex and gender with other identity factors that include race, national and ethnic origin, Indigenous origin or identity, age, sexual orientation, socio-economic condition, place of residence and disability;
 - 2) consult with the relevant stakeholders, including any relevant:
 - i. trade unions;
 - ii. affected communities;
 - iii. workers;
 - 3) have reference to the practice of competent international bodies; and to:
 - i. the Rio Declaration on Environment and Development;
 - ii. the UN Guiding Principles on Business and Human Rights;
 - iii. the Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, “Mapping Report”, UN Human Rights Council;
 - iv. the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).
30. The regulations may provide
- 1) Any specific requirements in due diligence procedures, including auditing procedures; and
 - 2) Any applicable standards and guidance to assist in assessing the adequacy of due diligence procedures, including standards applying to specific sectors, or to entities of particular sizes.

Due Diligence Reporting

31. Every reporting entity must publish a due diligence report annually;
 - 1) Subject to any further requirements in the regulations, due diligence reports shall list the affiliates and business relationships affected by the due diligence obligation arising under s. 26.
32. The regulations shall specify the required headings in due diligence reports.
33. The due diligence report shall be published in any annual reports of the entity, and on a website dedicated to this task and maintained by the Commissioner, and shall be called “human rights risk reports”;
 - 1) Any interested person or persons may, in accordance with procedures published by the Commissioner, submit commentary on due diligence reports published under this Act. Comments under this section shall be published on the website.

PART VIII: AUDIT AND ENFORCEMENT

34. On application from an interested person, or on its own initiative, the Commissioner shall inquire into a reporting entity’s compliance with s. 31 whenever there is reason to suspect
 - 1) that a reporting entity has not published a due diligence report, or has not complied with the requirements under regulations made under s. 32; OR
 - 2) that a reporting entity’s list of affiliates or business relationships provided pursuant to s. 31(1) is not comprehensive for the purposes of s. 26.
35. For purposes of verifying compliance with this Act, the Commissioner has all the powers conferred on a commissioner by sections 4 and 5 of the *Inquiries Act* and that may be conferred on a commissioner under section 11 thereof.
36. If, on the basis of information obtained, the Commissioner is of the opinion that
 - 1) a reporting entity has not published a due diligence report per, s. 31, or including the headings specified in the regulations per s. 32; OR
 - 2) that a reporting entity’s list of affiliates or business relationships provided pursuant to s. 31(1) is not comprehensive for the purposes of s. 26the Commissioner may issue a Notice.
37. The Notice shall:
 - 1) specify the name of the entity;
 - 2) detail the basis of the Notice, and specify how the entity can bring its reporting into compliance with the requirements of ss. 31 and regulations under s. 32;
 - 3) indicate a timeline for the entity to bring its reporting into compliance with the requirements of ss. 31 and regulations under s. 32;
 - 4) specify the amount, if any, of an Administrative Monetary Penalty owing if the entity does not bring its reporting into compliance with the requirements of ss. 31 and regulations under s. 32 on the timeline indicated;
 - 5) inform the entity of its right to contest the Notice, or the Penalty, in writing, and any procedure to be followed to exercise that right;

- 6) inform the entity of the manner of paying the penalty set out in the notice; and
- 7) inform the entity that if they do not pay the penalty or exercise their right to contest under part (5) they will be considered to have failed to comply and be liable for the penalty set out in the notice.

38. For greater clarity, the Notice shall not include any opinion on the accuracy or adequacy of due diligence procedures in a report.

39. The Minister may make regulations

- 1) respecting the determination of, or the method of determining, the amount payable as the Administrative Monetary Penalty;
- 2) respecting the service of Notices required or authorized under this Part, including the manner and proof of service and the circumstances under which documents are deemed to be served;
- 3) respecting the procedures to be followed in contesting a Notice or Penalty under s. 37 (5).

40. The amount that may be determined under any regulations made under s. 39 as the penalty for a violation may not exceed \$250,000.

PART IX: PRIVATE RIGHT OF ACTION

41. Nothing in this Part should be interpreted so as to preclude new or ongoing civil actions in relation to the activities of an entity.

Failure to Avoid, Prevent and Address Adverse Human Rights Impacts

42. Any person who has suffered an injury as a result of an entity's contravention of s. 25 (1), may, in a court of competent jurisdiction, bring an action against the entity for relief by way of:

- 1) injunction, including rehabilitation at the expense of the entity;
- 2) recovery of damages or losses;
- 3) aggravated and/or punitive damages;
- 4) an amount to fully or partially compensate for the costs that the person incurs in connection with the matter and proceedings under this section;
- 5) any combination of the above, or any order that a court considers appropriate in the circumstances.

43. If an entity fails to develop or implement adequate due diligence procedures, any interested person may apply to a court of competent jurisdiction to make any order against the entity that it considers appropriate in the circumstances, including an order providing for relief by way of:

- 1) injunction, including rehabilitation at the expense of the entity;
- 2) recovery of damages or losses;
- 3) aggravated and/or punitive damages;
- 4) an amount to fully or partially compensate for the costs that the person incurs in connection with the matter and proceedings under this section; or
- 5) any combination of the above, or any order that a court considers appropriate in the circumstances.

Defence

44. In any action under s. 42, it is a defence for the entity to prove that it exercised effective due diligence to prevent the adverse human rights impact(s) alleged.

Factors to Consider

45. In determining whether an entity exercised effective due diligence for purposes of s. 44, the court may consider
- 1) Extent of adherence to any relevant standards of conduct set out in the regulations;
 - 2) Extent of adherence to any relevant standards of conduct set out in the entity's public communications;
 - 3) Whether the adverse human rights impact was, or should reasonably have been, identified as a risk in the entity's due diligence procedures; and the adequacy of any steps taken to minimize the risk of the adverse human rights impact, having regard to the size of the entity;
 - 4) Any history of adverse human rights abuses in the entity's business operations;
 - i. Any steps taken by the entity to improve its due diligence procedures;
 - 5) In the case of business relationships in an entity's supply chain, any incentives the entity has created for improving human rights standards;
 - 6) Other factors as defined in the regulations.

Public Support

46. If, on an action under s. 42, or on application under s. 43, a court is satisfied that
- 1) A person has suffered loss or damage as a result of conduct that contravenes any provision of this Act or the regulations; OR
 - 2) An entity has failed to develop and implement adequate due diligence procedures;

A party may additionally make a motion for an order regarding the entity's eligibility for support, subsidy, promotion or protection by any or all government agencies or departments. The court may order that any or all government agencies or departments:

- i. Withdraw any existing support or subsidy, and terminate any promotion or protection of the entity for a stipulated period, or until specified conditions are met;
 - ii. Disallow any future support, subsidy, promotion or protection for a stipulated period or until specified conditions are met.
47. On a motion under s. 46, any affected government agency may appear.

Jurisdiction

48. A Canadian court has jurisdiction to hear and determine an action or application brought under this Part in the following cases:
- 1) the Defendant is domiciled or ordinarily resident in the court's jurisdiction;
 - 2) the Defendant has submitted to the court's jurisdiction;
 - 3) the Defendant has entered an agreement that grants the court jurisdiction over the action; or

- 4) there is a real and substantial connection between the court's jurisdiction and the facts on which the action against the Defendant is based.
49. An entity is ordinarily resident in the court's jurisdiction, for the purposes of this Part, only if:
- 1) it has or is required by law to have a registered office or business address in the court's jurisdiction;
 - 2) pursuant to law, it
 - i. has registered an address in the court's jurisdiction at which process may be served generally; or
 - ii. has nominated an agent in the court's jurisdiction upon whom process may be served generally;
 - 3) it has an agent, representative, warehouse, or place of business in the court's jurisdiction; or
 - 4) its central management is exercised in the court's jurisdiction.
50. Without limiting the right of the Plaintiff to prove other circumstances that constitute a real and substantial connection, a real and substantial connection is presumed to exist if the action:
- 1) concerns actual and not virtual business carried out in the court's jurisdiction over a sustained period;
 - 2) concerns a multi-jurisdictional tort or fault where more than a minor element of it was committed in the court's jurisdiction; or
 - 3) concerns obligations that are connected to a contract made in the court's jurisdiction or governed by its laws;
 - 4) concerns restitutionary obligations that, to a substantial extent, arose in the court's jurisdiction.
51. Once a court has jurisdiction under s. 48, it shall not decline to exercise jurisdiction on the ground that the dispute should be decided in a court of another State or an arbitral forum.
- 1) This section shall not affect the rules on jurisdiction related to:
 - i) subject matter or to the value of the claim; or
 - ii) on the internal allocation of jurisdiction among the courts of Canada.

Limitation

52. No action may be brought under subsection s. 42 after five years from
- 1) the day on which the adverse impact was discovered; or
 - 2) the day on which criminal proceedings, under this Act or other, in any jurisdiction in Canada were finally disposed of
- whichever is the later.
53. No application may be brought under s. 43 after two years from
- 1) the day on which the procedures in question were, or ought to have been, published.
54. A limitation or prescription period under this Act is suspended
- 1) during any period in which the person that suffered the loss or damage is incapable of beginning the action because of any physical, mental or psychological condition;
 - 2) during any period in which the person that suffered the loss or damage is unable to ascertain the involvement of the entity or its identity;

- 3) in respect of an action based on a sexual assault; or
- 4) for any other reasons for suspension under the common law.

Parallel litigation

55. The provisions of this Act apply notwithstanding any proceedings on the same adverse impact, or on a related adverse impact, in a state other than Canada.
56. The provisions of this Act apply notwithstanding any ruling or order by a court in a state other than Canada.

Court of Competent Jurisdiction

57. “Court” in this Part refers to a court of competent jurisdiction, including a provincial Superior Court and Federal Court.