Business and Human Rights The Stakes Continue to Grow

December 07, 2018

Three thousand business, government and NGO representatives converged in Geneva last week with the objective of mitigating the impact of business operations on human rights. The takeaway after three days at the 7th UN Forum on Business and Human Rights is clear: businesses that do not take proactive steps to assess and mitigate their human rights impacts will be offside in the evolving regulatory landscape and find themselves at a competitive disadvantage.

As national regulatory regimes and stakeholder expectations expand in the area of business and human rights (BHR), success in foreign markets will require Canadian businesses to meet the new regulations and expectations.

Spotlight on supply chains

Supply-chain integrity is key to the evolving regulatory landscape in this field as in many other legal compliance matters. While UN delegates met last week, Australia passed its *Modern Slavery Act*, joining the U.K., France, and California in requiring companies to assess their supply chains and address potential human rights impacts. The Australian legislation comes into force on January 1, 2019. Parallel measures are pending in Switzerland and have been proposed in Hong Kong.

Canada is not immune to these developments. In October 2018, a Parliamentary report urged the government to adopt supply-chain measures to address child labour. The new Canadian Ombudsperson for Responsible Enterprise (CORE) will have a broad mandate to investigate human rights issues in supply chains and other contexts. Similarly, the federal government recently ordered Export Development Canada and the Canadian Commercial Corporation to take measures to comply with Canada's commitments in BHR and to implement human rights due diligence of commercial transactions that they support.

Effective risk mitigation: Meeting and exceeding expectations

Failure to adapt to this new regulatory environment exposes companies to legal liability as well as reputational challenges. Plaintiffs from around the world have launched class action claims against several Canadian companies for alleged human rights abuses and Canadian courts have shown a willingness to adjudicate these claims. Increased

regulation and oversight of global business will inevitably result in further claims against Canadian businesses.

Risk analysis typically focuses on the impact of external factors and circumstances on a company's business. In the BHR field, companies must work in the opposite direction and determine how their operations impact others. Ensuring supply chains are responsibly sourced and that the human rights of workers and other stakeholders are respected requires companies to evaluate their business counterparties and third parties in a manner similar to that used to assess legal exposure into corruption, sanctions violations and money-laundering risk. Many of the challenges posed are similar, including the central question: How far must the inquiry go?

Due diligence and analysis of third party information is only the starting point. Companies must also be prepared to react when presented with conclusions that a business activity or relationship potentially contributes to a human rights violation. This does not automatically mean stopping planned investments, ongoing operations, or terminating business relationships. But it does mean businesses should be prepared to adapt or revise contractual and other legal arrangements to reconcile their activities with local and home state BHR laws, and emerging international BHR norms like the UN Guiding Principles on Business and Human Rights. These actions require experienced legal advice and guidance.

The challenge for business going forward is how to make informed decisions to avoid, mitigate, or remediate adverse human rights impacts, and ultimately improve business performance.

The BHR horizon for Canadian businesses

Changes in Canada and abroad mean Canadian businesses must be prepared for enhanced global standards addressing human rights. Many countries where Canadian businesses operate are establishing national plans, as required by the UN Guiding Principles, to regulate business conduct to protect human rights. Canadian companies that are not proactive in mitigating human rights impacts abroad could also find themselves in future the subject of investigations by the Canadian Ombudsperson for Responsible Enterprise.

The challenge for businesses is real, but manageable. In Geneva, CEOs and executives from many large multinational companies noted how much their business performance improved by removing or mitigating the potential for adverse human rights impacts. Canadian companies would be well-served to follow suit.

By

Josh Scheinert, Milos Barutciski

Expertise

International Trade & Investment

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.