Canada appoints Ombudsperson for Responsible Enterprise

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The Government of Canada announced the appointment of Sheri Meyerhoffer, a Canadian lawyer with a long career in international development, as the Canadian Ombudsperson for Responsible Enterprise (CORE) on April 8, 2019. This is a further step in the government's plans to move Canada to the forefront of implementing global standards in the area of business and human rights (BHR).

The appointment comes 15 months after International Trade Diversification Minister Jim Carr announced the establishment of a CORE to replace the Office of Canada's Corporate Social Responsibility (CSR) Counsellor.

The CORE's mandate is to review alleged human rights abuses by Canadian businesses abroad. Initially, that mandate will apply only to the extractive (mining/oil and gas) and apparel sectors, with a view to expanding the CORE's scope over time.

Important questions about how the CORE will carry out its mandate are still unanswered. These include:

- how the CORE will conduct investigations and the transparency of the process;
- the role and procedural rights of businesses under scrutiny by the CORE;
- the role of complainants and third parties;
- publication and implementation of the CORE's findings and recommendations; and
- the consequences of non-compliance with the CORE's recommendations.

Minister Carr is currently seeking external legal advice on the CORE's potential powers and expects that advice in early June.

Like the former CSR Counsellor, the CORE will be able to recommend the government withhold trade commissioner services or Export Development Canada financial support from a company implicated in human rights abuses. The CORE will also play an advocacy role promoting business activity compliance with international standards adopted by Canada, like the UN Guiding Principles on Business and Human Rights.

Although the CORE's mandate will be initially restricted to the extractive and apparel sectors, many international companies are already taking steps to align their operations with BHR standards. This is driven by a combination of factors, including class actions against companies in Canada, the United Kingdom and elsewhere claiming damages for violations of international human rights, as well as statutory developments like the UK Modern Slavery Act and similar legislation in Australia and France, and under consideration in other countries.

Companies that ignore the expanding impact of BHR standards and their enforcement using a range of vehicles will find themselves at a competitive disadvantage and exposed to potential regulatory, civil and reputational risk.

The CORE is only one of several recent steps the government announced to enhance Canada's commitment to promoting BHR, including:

- Last fall, Canada introduced a new component to its procurement regime requiring apparel and textile suppliers certify that they and their first-tier suppliers do not employ forced or child labour;
- Export Development Canada and the Canadian Commercial Corporation have incorporated human rights considerations into their decision-making processes;
- In February, Canada announced it would hold consultations on a Canadian Modern Slavery Act, a law that would require businesses in Canada of a certain size to publicly report steps they are taking to ensure there is no modern slavery in their supply chains. A draft Modern Slavery Act was introduced by MP John McKay at the end of last year. Mr. McKay's bill includes civil penalties for companies who fail to report or report false information;
- Canada is implementing the Arms Trade Treaty, and as a result amending the *Export and Import Permits Act* to legislate human rights considerations into the export permitting process; and
- Under the new US-Mexico-Canada trade agreement, Canada will be required to take steps to prohibit the importation into Canada of goods made by forced labour.

In addition to these Canadian developments, the first draft of a proposed binding BHR treaty was released by a UN working group last year. The draft builds off the UN Guiding Principles and negotiations to complete the draft are ongoing.

Over the past half-decade, several class actions have been initiated by foreign plaintiffs before Canadian courts seeking damages from Canadian companies alleged to have been involved in human rights abuses abroad. Government regulation and policy has evolved alongside these lawsuits. CORE is just the latest. Businesses can be certain that more legal claims and policy developments will follow.

With these and similar BHR developments in Canada and elsewhere, companies should review their existing policies and assess how they align with these government initiatives. Companies that have international operations, particularly in countries with human rights or rule-of-law challenges, would be prudent to develop and implement a BHR policy where they have not yet done so.

By

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