

Senate Hearing on Bill S-211 – An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff

Standing Senate Committee on Human Rights

Monday February 28th, 2022 at 5:00 pm Ottawa/Washington (ET) time

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1. Briefing – Speaking Notes (Chris Crewther)

Introduction

- Thank you for the opportunity to attend this hearing on [Bill S-211](#) before the Standing Senate Committee on Human Rights.
- I acknowledge Chair Salma Atallahjan, Deputy Chair Wanda Thomas Bernard, Committee Members, and fellow panellist Emily Dwyer from the *Canadian Network on Corporate Accountability*.
- For background, I'm Head of Strategic Partnerships with the [Global Fund to End Modern Slavery](#). I'm also on the Australian Government's Modern Slavery Expert Advisory Group.
- Formerly, I was an Australian Member of Parliament, Chair of the Australian Parliament's Foreign Affairs and Aid Sub-Committee, and Chair of the Australian Government's Home Affairs and Legal Affairs Policy Committee.
- Through those roles I instigated and led Australia's Modern Slavery Inquiry, resulting in the [Hidden In Plain Sight](#) report and recommendations, and Australia's [Modern Slavery Act 2018](#).
- I've also been liaising with Senator Julie Miville-Dechêne, MP John McKay, MP Marcus Powlowski, and others since July last year and more recently, and addressed Canada's All Party Parliamentary Group to End Modern Slavery in December.
- I congratulate you all on your efforts to bring about Canadian transparency in supply chains legislation, including gaining Government and Opposition support to pass such legislation, and the recent Ministerial mandate letters.

The Global Fund & the need to tackle modern slavery

- Firstly, on the Global Fund, we were launched as a multi-donor initiative in 2017, with initial matching contributions from the US and UK, followed by Norway, Liechtenstein, philanthropists and private sector actors.
- With this support, the Global Fund is mobilising resources, designing innovative public-private partnerships, funding new tools and methods, and equipping partners to scale and replicate solutions that have demonstrated impact in tackling modern slavery.
- The Global Fund has granted US\$45 Million to more than 40 partners in 9 countries, including Bangladesh, India, Vietnam, the Philippines, Malaysia, Indonesia, Brazil, Uganda and Kenya.

- We are also encouraging nations to put in more resources against the fight, to better enforce existing legislation, and to implement further legislation against modern slavery.
- So we strongly support Canada's efforts to bring about this legislation.
- This is important as the global fight to end modern slavery, human trafficking, and forced labour stands at a crossroads. Over 40 million people live in modern slavery, deprived of their fundamental rights and freedoms. More than 70% are women and girls; one in four is a child.
- Despite significant commitments and investments, *the number of people living in modern slavery is rising, not falling*. Covid-19, corruption, authoritarianism, and indeed crises such as in Ukraine, are only exacerbating these issues.
- While being mostly illegal, modern slavery persists almost everywhere. Tens of billions of dollars worth of everyday goods and services, from coffee and chocolate, to cell phones and the clothes we wear, are tainted by forced labour.
- It persists because it is profitable, with perpetrators making an estimated \$150 billion annually.
- Yet despite these terrible trends, there is hope. Evidence shows we can make serious progress to break the cycles of vulnerability, profit, and impunity that perpetuate human trafficking.
- First, thanks to leaders like you, we can turn the tide.
- Second, nations must follow through on their commitments to eradicate forced labour from global and domestic supply chains and hold governments and corporations accountable.
- Third, modern slavery is deeply integrated with many of the biggest problems facing the planet, being strongly linked to environmental degradation, clean energy supply chains and climate change, inequality (particularly for women, girls and excluded minorities), instability, unsafe migration, corruption, and criminal networks.
- And, there is no fair economic competition when some are using forced labour.

Australia's Modern Slavery Act

- In Australia, I had the opportunity to launch an Inquiry to do something about these crimes, one that didn't sit on a shelf gathering dust, but which could have real life outcomes.
- So in late 2016 I sought a referral for a Parliamentary Inquiry into establishing a Modern Slavery Act in Australia.
- I often use the example that you don't get from 0 to 100m in one step. In Australia it was a step-by-step process, which is why I encourage you all. I went from not even being sure I could get the Inquiry approved and referred; to having it commence but not being sure the Inquiry would lead to a Bill; to having possibly a very weak Bill; to having a much stronger Act than expected.
- It's been similar in Canada. Even over the last six months, you've gained support and momentum from both the Government and Opposition, as well as amongst minor parties, independents, the media, and the public.

- Another saying is, ‘don’t let the perfect get in the way of the good’. Had we insisted on the perfect, we likely wouldn’t have got an Australian Modern Slavery Act at all.
- While we didn’t get everything that we wanted, in many ways Australia’s Act was much stronger than the UK’s original 2015 Act.
- On the weaker side, our Act requires entities above a A\$100 million threshold (about C\$91 million) to report annually on modern slavery, compared to about A\$67 million in the UK and A\$50 million recommended in our inquiry report. Australia also doesn’t have an independent anti-slavery commissioner, a modern slavery hotline, or national labour hire licensing like the UK does, and as we recommended.
- However, Australia’s Act was stronger than the UK’s in many ways, including having voluntary reporting below the threshold, world-first government reporting, a legislated public register of modern slavery statements, prescribed reporting criteria, some compliance section 16A ‘name and shame’ measures to list entities who don’t report or don’t report properly, and the legislated three year review.
- Of note it requires principal governing body sign-off, which has brought modern slavery to board attention nationally. It’s great Canada’s updated Bill S-211 now incorporates this.
- While the strength of Australia’s Act has copped recent criticism, and many statements are not yet up to scratch, thanks to Australia’s Act, thousands of entities (and people) are now more aware; paying attention every year; actively looking into their operations and supply chains; taking action to stamp out and remediate modern slavery; and identifying and reporting crimes. I know that many reporting entities are taking a lot of action, even behind the scenes, beyond what they are putting in their public statements.
- Australia’s Act is also having a global impact, including in Canada, given numerous multinational companies with operations in both Australia and Canada having to report in Australia on their global supply chains.

Canada’s Bill S-211 / transparency in supply chains legislation

- A Canadian Act done well would “up the bar” internationally.
- In terms of Canada’s Act, I liaised with Senator Julie Miville-Dechéne in July last year on quite a number of areas that could be improved with the Bill at the time, and repeated a few of these points in my address to the All Party Parliamentary Group in December.
- So it’s good to therefore see a number of these recommended changes incorporated into Bill S-211, and effectively replicated in [Bill C-243](#), as brought to the House by Government MP Marcus Powlowski working closely with MP McKay.
- I’ve made a number of suggested changes, relating to S-211 but also to C-243, in the written document provided to you, that I’m happy to go through more. There are as follows:
 - Under the Section 2 ‘entity’ definition, I’d question the conditions being subject to ‘at least one of its two most recent financial years’. What if an entity was successful

in the prior financial year, but then went broke in the most recent financial year. I would suggest changing this to the most recent financial year only.

- Also, my view is that the current definition limits the entities who should be covered. For example, large churches, charities, funds, etc, may be excluded. That said, I note section 23 gives the ability to make regulations expanding the entity range.
- I would also expand the Bill beyond forced labour and child labour, for example to include human trafficking, forced marriage (which can for example be in the operations of say a large church being paid a fee to perform a marriage), and other forms of modern slavery. This would align with the UK and Australian Acts.
- Voluntary reporting should also be added for entities below the threshold.
- On compliance measures, it is worth requiring that the Government 'list those who may need to report', in an 'including but not limited to' manner. 'Name and shame' powers similar to section 16A of Australia's Act, in addition to penalty powers already there, should also be added. This allows the Minister to list those who don't report, or don't report sufficiently, even after Ministerial follow up. Bigger entities may not mind the penalty level if it is private, whereas naming and shaming can be powerful. I'd also suggest positively listing those who report voluntarily.
- There needs to be an expansion to both goods and **services** in the summary, preamble, definitions, purpose, application, and more, not just goods. I note that C-243 does improve on S-211 by referencing services, but only as it relates to the Government (such as in section 22(1) of C-243).
- The legislated review period should also be reduced from five years down to three. Otherwise it may be seven years before any necessary changes are made post an Act coming into force.
- An issue raised in the UK, when I led Australia's Modern Slavery delegation there, was the burden on small entities being asked to submit multiple and repeating sets of information to a large range of reporting entities. We had recommended that this be catered for in Australia's Act, but it wasn't. It is an issue now. So I would suggest building into your Bill an ability for entities to provide their own modern slavery statement (voluntary or mandated), and/or a standard regulated supplier questionnaire, to reporting entities. It should be regulated that that be deemed sufficient, and that a reporting entity cannot ask for further information, unless a reporting entity is asking for information not already contained in the supplier's statement.
- I'd also suggest more international consistency for the mandatory sections 6 and 11 criteria, while concurrently making the Canada Act stronger. For example, the identity of the reporting entity is missing. I suggest adding that as subsection (a) to align with the Australia's Act, then change (a) about structure to (b). Also, move up the current (c) to become the new (c), and change the word "*business*" to "*operations*" or "*activities*". In addition, take out "*the steps it has taken to assess and*

manage that risk” from the current (c), making that a separate (d), add the word *“including”*, then move the current (b) about due diligence to become a sub-point of the new (d), and the current (d) about remediation to become the second sub-point of the new (d). Subsection (e) about training should become (f), and add training for management, not just employees. And subsection (f) about effectiveness should become (e), again changing *“business”* to *“operations”* or *“activities”*. Also, I suggest adding a subsection (g) about innovative measures or other information the organisation wishes to report, to not make it just a tick-box exercise.

- Attestation should also be added for government entities, from the head or governing body of that government institution, as has been done for entities in section 11(5).
- On accessibility of the report, I would eliminate the legislated requirement for entities to put their statement on their website, with the exception of government institutions. This is perhaps regulatory overreach, as statements will already be in the public registry. Also, it’s not necessary to have offences associated with this in my view, so I’d remove reference to section 13 from section 19(1). If section 13 is retained in 19(1), section 8 should also be included in section 19(1) to cover the government as well.
- On a Bill error, section 16(1) should refer to 15(1), not 11(1).
- On a designated person’s powers, I’d ask whether there should be a warrant to enter into a place generally, not just a warrant only for dwelling places? In my view, a designated person’s powers are perhaps over the top, and such powers could be abused. This could be an area of compromise in the Bill.
- On section 18, I’d change it to say *“section 15 or otherwise”*, as information can be obtained on non-compliance, under say section 11, apart from using section 15 powers.
- On section 19(1) offences, these offences should only be applicable if an entity has failed to or refused to comply with Ministerial direction/s under section 18. At the moment it seems open to apply offences even for a simple breach of the mandatory criteria, even without a corrective ask being made first.
- More broadly, if possible, I’d suggest also legislating for a compensation/redress scheme, modern slavery hotline, and a truly independent anti-slavery commissioner.
- I’d also suggest Canada working together with Australia and the UK to build a combined international register, with more nations introducing such legislation.

Canada resourcing global action to end modern slavery to match its legislative efforts

- There is also an opportunity for Canada to match its legislative efforts, by contributing further to global efforts, such as by joining the UK, the US, Norway and others in the Global Fund.

- This would complement Canada’s legislative efforts and the mandate letters, which call on say the Minister of Labour to “*introduce legislation to eradicate forced labour from Canadian supply chains and ensure that Canadian businesses operating abroad do not contribute to human rights abuses*”.

2. Further background information

Definition of modern slavery:

- Modern slavery is an umbrella term, including the crimes of human trafficking, forced labour, debt bondage, forced child labour, forced marriage, servitude, slavery, and commercial sexual exploitation.
- It is given a legislated definition under Australia’s *Modern Slavery Act*, which could though be improved upon.

Environment/slavery nexus:

There is a significant and growing correlation between climate change, environmental destruction, and modern slavery. These two issues don’t just co-exist; they reinforce each other, often in cyclical ways. Unscrupulous actors responsible for environmental degradation often rely on forced labour to boost profits. The more people are trafficked into this work, the worse the environmental degradation becomes. Over time, local populations become more vulnerable to extreme climate events, which in turn creates forced migration and increases vulnerability to different forms of trafficking. On this nexus:

- 12.2 million workers are trapped in forced labour in environmentally degrading activities.
- An estimated 40% of **deforestation** is carried out by workers subjected to forced labour, in places such as the Amazon and Sumatran rainforests. In particular, the Sundarbans mangrove forest in Bangladesh and India, a massive carbon sink and UNESCO World Heritage Site, has highly-polluting shrimp harvesting, illegal deforestation, and significant forced labour.
- The extraction of cobalt from the DRC – one of the poorest and most unstable countries, where 60% of cobalt originates from – has been linked to human rights abuses, corruption, environmental destruction and child labour. Cobalt is used in **lithium-ion batteries** powering electric cars, smartphones, laptops, solar battery backup sites, etc.
- The **global solar panel industry** is implicated in the Uyghur forced labour system, with polysilicon manufacturers in the Uyghur Region accounting for approximately 45% of the world’s solar-grade polysilicon supply (used in solar panels globally).
- The wind-power boom has set off a scramble for balsa wood, used in blades for **wind-power turbines**, with evidence of rising forced labour and uncontrolled logging, such as in Ecuador.
- Warming and sea level rise is spurring climate migration, with estimates of millions more such migrants. Vulnerability linked with forced migration leads to increased trafficking.

- Modern slavery as a country would be the 3rd-largest emitter, after China and the US, at 2.54 billion tons.
- Abolishing modern slavery is one of the most effective instruments to mitigate climate change. Yet, there is little-to-no global action on joint initiatives to tackle modern slavery and climate change.

Examples of tackling modern slavery through the Global Fund:

- I would like to share one such story with you. Leah was an overseas Filipino worker with 5 children. With limited employment options in her hometown, she took out a loan to secure a job overseas. After arriving in the foreign country, she was repeatedly beaten; she didn't even have her own room and was forced to sleep in the bathroom. She initially stayed because she wanted to pay off the loan but, when things got unbearable, she ran away to the placement agency that brought her to the country. They took her back to her abusive employer. Much later, she was finally able to escape while taking out the trash. A kind stranger helped her get to the Filipino Embassy but, by that time, her family had not heard from her in 7 years. When she finally arrived home, the Global Fund to End Modern Slavery (GFEMS) partners helped provide Leah with rehabilitative services and started a legal case on her behalf. With our support, Leah has now established her own micro-enterprise.
- We've helped thousands of women like Leah, but we saw the need to go upstream to prevent modern slavery before it starts. That's why we helped establish the first ethical recruitment agency in the Philippines for low skilled workers. This agency prohibits charging fees, which has saved workers an estimated \$7.5 million and is now independently profitable, resulting in a sustainable win for workers, the community, and the business. GFEMS specialises in designing projects to shift systems and meet multiple objectives.
- For some time now, GFEMS has observed that the industries most responsible for environmental degradation also have high rates of forced labour. In Bangladesh where we currently work, the Sundarbans forest is the habitat of the endangered Bengal tiger, but it is also a natural barrier protecting Bangladesh from extreme weather events like cyclones.
- The Sundarbans are currently being destroyed by shrimp cultivation with many workers—including children—in forced labour. If this continues, more than 13.5 million people living around the Sundarbans are at risk of climate-induced displacement.
- GFEMS has mapped out a 3-pronged approach to provide families with economic alternatives to shrimp cultivation, shift international market incentives towards ethical shrimp production, and increase Bangladeshi law enforcement capacity to investigate and stop environmental and labour abuses. This is just one example of how an integrated strategy could achieve both environmental and anti-slavery objectives.