



## MEMORANDUM

From: International Justice & Human Rights Clinic, Peter A. Allard School of Law, UBC

Date: February 22, 2021

Re: Proposed amendments to Bill S-216 (Modern Slavery Act)

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The International Justice & Human Rights Clinic (“IJHR Clinic”) views *Bill S-216, An Act to enact the Modern Slavery Act and to amend the Customs Tariff* (“Bill S-216”) as an important initial step towards preventing modern slavery in the supply chains of Canadian companies. This memorandum identifies six proposed amendments to Bill S-216 that would make the law more effective.

### 1. Include due diligence requirements

The IJHR Clinic recommends that due diligence requirements, such as a duty of care, be incorporated in Bill S-216 to more forcefully combat modern slavery. French and Dutch legislation provide persuasive guidance by requiring entities to develop and fulfill individual due diligence compliance plans. Bill S-216 currently relies solely upon reporting requirements to combat modern slavery in supply chains. As is evident from similar legislation in foreign jurisdictions, such as the United Kingdom and the state of California, reporting alone is insufficient to achieve Bill S-216’s goals of combatting modern slavery in supply chains and influencing companies to meaningfully engage with their reporting requirements under s. 7 of Bill S-216. Comprehensive due diligence provisions are outlined in the IJHR Clinic’s proposed [Transparency in Supply Chains Act \(“TSCA”\)](#).

### 2. Include protections for whistleblowers

Providing whistleblowers with protections under Bill S-216 will eliminate barriers that may dissuade them from providing valuable information pertaining to modern slavery. Bill S-216 also currently does not have any mechanisms to facilitate whistleblowers’ disclosure of information. Bill S-216 should therefore be amended to incorporate these measures, as these would strengthen the Minister’s<sup>1</sup> investigatory functions and influence companies to substantively comply with their reporting requirements. Examples of whistleblower protections are incorporated in the IJHR Clinic’s TSCA.

### 3. Appoint the Canadian Ombudsperson for Responsible Enterprise (“CORE”) to oversee the independent administration of Bill S-216, including by providing meaningful powers of investigation

To strengthen compliance with Bill S-216, the CORE should be appointed to oversee its administration. This role is currently designated to the Minister, which poses issues of independence and the potential for political interference. The effectiveness of legislation targeting modern slavery in other jurisdictions has been hampered by a lack of independence from government’s executive branch. Transferring the

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<sup>1</sup> As per proposed amendment 3 (below), we recommend that these functions be employed by the CORE.

powers currently vested in the Minister to the CORE could help remedy these issues. The CORE's mandate, as per their enabling Order in Council, should expressly establish that the CORE must carry out their functions independent of government's executive branch. The CORE should also be afforded robust powers of investigation, including the ability to compel document production and testimony, and the ability to recommend remedies.

#### **4. Empower the CORE to enact guidelines pertaining to international human rights law and establish a Compliance Committee to adjudicate instances of substantial non-compliance**

The IJHR Clinic recommends that Bill S-216 be amended to empower the CORE to enact guidelines. These guidelines would define what parameters Canadian companies must follow in their operations abroad to comply with Canada's international human rights obligations. Grievances alleging that a company has failed to abide by these guidelines would be investigated and reported upon by the CORE. We also recommend establishing an administrative tribunal, named the Compliance Committee in our model bill. The Compliance Committee can adjudicate instances of substantial non-compliance with the CORE's guidelines and, if appropriate, order remedies.

#### **5. Replace the definition of "child labour" in Bill S-216 with a definition developed by the International Labour Organization**

The IJHR Clinic recommends that the definition of "child labour" in Bill S-216 be amended to adopt definitions developed by the International Labour Organization to comply with international standards.<sup>2</sup> The current definition of child labour imposes Canadian labour standards related to child labour in foreign jurisdictions and also covers conduct contained within the *Worst Forms of Child Labour Convention*. The current definition may be inconsistently applied because Canadian labour standards are largely regulated at the provincial level. Adopting international definitions of child labour, in addition to the *Worst Forms of Child Labour Convention* definition, will help provide robust coverage and clarity to ensure consistency for entities covered by Bill S-216 while capturing the same range of conduct as the current definition.

#### **6. Prohibit entities convicted of an offence under Bill S-216 from entering into federal government procurement contracts**

The IJHR Clinic recommends that entities convicted of an offence under Bill S-216 be prohibited from entering into federal procurement contracts. A prohibition against contracting with the federal government would help ensure compliance with Bill S-216 and uphold the integrity of the federal procurement process. A prohibition could be established through an amendment to Bill S-216 which in turn amends s. 42(1) of the *Financial Administration Act* and/or s. 750(3) of the *Criminal Code*, which both provide that individuals and entities convicted of certain acts, such as fraud, are prohibited from contracting with the federal government. The Minister of Public Services and Procurement could also amend the federal *Ineligibility and Suspension Policy* to exclude entities guilty of an offence under Bill S-216 from entering into federal procurement contracts.

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<sup>2</sup> There are currently three internationally adopted definitions developed by the International Labour Organization that could be used, found in the *ILO Minimum Age Convention*, the *Resolution Concerning the Statistics of Child Labour*; and the International Programme on the Elimination of Child labour.