

# **Mitigating Human Rights Risk in the Supply Chain: Strategies for In-House Counsel**

**November 24, 2021**

**Moderator:** Angela Yadav, Senior Legal Counsel, HSBC Bank Canada  
**Speakers:** Martha Harrison, Partner, McCarthy Tétrault LLP  
John Boscariol, Partner, McCarthy Tétrault LLP

# Today's Focus

- addressing risks of human rights violations in your supply chain
  - latest economic sanctions measures focusing on gross violations of human rights
  - new human-rights based criteria for controls over exports and technology transfers
  - prohibited dealings with goods made in whole or part from forced labour
  - proposed supply chain due diligence disclosure legislation

# Human Rights Risk in the Supply Chain

- growing impact of economic sanctions, modern slavery laws and export and tech transfer controls in recent years
- significant financial and reputational costs of compliance failure
- increasing pressure from government, media, investors, consumers, employees and other stakeholders
- companies now more concerned than ever before about whom they deal with, where and from whom they source, where their products and technology end up, and who uses or benefits from their goods and services
- financings, private equity, underwriting, mergers and acquisitions, joint ventures, banking relationships
- “compliance convergence”

# Canadian Legal Landscape

- economic sanctions
  - *Special Economic Measures Act*
  - *United Nations Act*
  - *Freezing Assets of Corrupt Foreign Officials Act*
  - *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*
  - *Criminal Code* (“terrorist groups”)
- export and technology transfer controls - *Export and Import Permits Act*
  - *Export Control List, Area Control List*
  - *Brokering Control List*
- forced labour prohibitions – *Customs Act*
- supply chain disclosure – *Modern Slavery Act*

# Countries Subject to Canadian Economic Sanctions

Belarus	Mali	South Sudan
Central African Republic	Myanmar	Sudan
China	Nicaragua	Syria
D.R. of the Congo	North Korea	Ukraine
Iran	Russia	Venezuela
Iraq	Saudi Arabia	Yemen
Lebanon	Somalia	Zimbabwe
Libya		



# Introduction of New Grounds for Sanctions

- October 18 2017, *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* – new grounds to list foreign nationals:
  - “responsible for, or complicit in, extrajudicial killings, torture or other gross violations of internationally recognized human rights”
  - “responsible for or complicit in ordering, controlling or otherwise directing acts of corruption...which amount to acts of significant corruption”
- similar grounds added to *Special Economic Measures Act*
  - “gross and systematic human rights violations have been committed in a foreign state”
  - “national of a foreign state who is either a foreign public official...is responsible for or complicit in ordering, controlling or otherwise directing acts of corruption...which amount to acts of significant corruption”

# Introduction of New Grounds for Sanctions

- human rights based sanctions under these new grounds recently imposed against

<b>China</b>	<b>Russia</b>	<b>Venezuela</b>
<b>Belarus</b>	<b>Saudi Arabia</b>	<b>South Sudan</b>
<b>Nicaragua</b>	<b>Myanmar/Burma</b>	

# Canada's Sanctions Against China

- ▮ March 21, 2021 first sanctions against China in over 30 years
- ▮ so far, only list based sanctions targeting:
  - ▮ Zhu Hailun, former Deputy Party Secretary of the Xinjiang Uyghur Autonomous Region
  - ▮ Wang Junzheng, Secretary of the Party Committee of the Xinjiang Production and Construction Corps
  - ▮ Wang Mingshan, Secretary of the Political and Legal affairs committee in Xinjiang and former director of the Xinjiang Public Security Bureau
  - ▮ Chen Mingguo, Director of the Xinjiang Public Security Bureau (the local police force)
  - ▮ Xinjiang Production and Construction Corps Public Security Bureau, a state-owned economic and paramilitary organization responsible for security and policing, including the management of detention centers



# Canada's Sanctions Against China

- increasing focus on China's human rights record
  - February 12, 2021 Global Affairs Canada Advisory on Doing Business With Xinjiang-Related Entities
    - sourcing directly or indirectly from Xinjiang region
    - seeking to engage in Xinjiang region
    - exporters/suppliers to Xinjiang region
  - Integrity Declaration on Doing Business with Xinjiang Entities
- impact of the release of Michael Kovrig and Michael Spavor

# Export and Technology Transfer Controls

- export and technology transfer controls – 2019 human-rights related criteria built in to permit regime
  - mandatory criteria permits Minister must refuse if:
    - serious violations of international humanitarian or human rights law
    - offences under international conventions or protocols relating to terrorism or transnational organized crime
    - serious acts of gender-based violence or violence against women and children
- new policies imposing restrictions and denials for transfers to
  - **Hong Kong, China, Turkey, Saudi Arabia, Belarus, and Iran**

# The Canadian Position on Forced Labour

- Canada has taken active steps to address forced labour concerns
  - import ban on products made in whole or in part from forced labour
  - section 136(1) of the *Customs Tariff*
  - tariff item No. 9897.00.00
  - sections 101-102 of the *Customs Act*

# Customs Process for Enforcement of Import Ban

- CBSA officers have wide administrative discretion under the enabling statutes
- consider what evidence might be required to prove or disprove a tariff classification of 9897
- impact on and influence by the U.S. approach and application



# Global Supply Chain Legislation

- usually divided into two categories:
  - transparency legislation
    - Requires companies to disclose identified risks without directed a change in conduct
  - due diligence legislation
    - Requires adherence to new forms of conduct and market practice
- examples: the California and French approaches

# Bill S-216: The *Modern Slavery Act*

- Canada attempted to follow in the footsteps of its influential trading partners with the proposed Bill S-216, which we anticipate will be re-introduced by the new minority government
  - imposition of reporting obligations
  - transparency goals
  - keys to preparing for future obligations

# Tools for Risk Mitigation

- ▮ policies and procedures (and evidence of implementation)
- ▮ align management, policy, and procurement teams
- ▮ sanctions screening against all involved parties
- ▮ consider partnering with third party certification bodies, and how deep into the supply chain continuum due diligence should reflect

# Tools for Risk Mitigation

- ▮ reps and warranties/certifications from vendors, customers and end-users
  - ▮ not a listed person, nor owned or controlled by a listed person
  - ▮ compliance with trade controls and certifications
  - ▮ no use of forced or child labour
  - ▮ implementation of policies and procedures
  - ▮ product information, including classification
  - ▮ end-use certification
  - ▮ indemnification
  - ▮ notification of investigations or inquiries, cooperation
- ▮ monitoring counterparties after on-boarding
- ▮ M&A due diligence on targets – evidence of implementation





**Martha Harrison**  
**McCarthy Tétrault LLP**  
www.mccarthy.ca  
Direct Line: 416-601-8864

E-mail: [mharrison@mccarthy.ca](mailto:mharrison@mccarthy.ca)  
LinkedIn: [linkedin.com/in/martha-harrison-trade-and-regulatory-law](https://www.linkedin.com/in/martha-harrison-trade-and-regulatory-law)  
Twitter: [www.twitter.com/intltradelawyer](https://www.twitter.com/intltradelawyer)

**John W. Boscariol**  
**McCarthy Tétrault LLP**  
www.mccarthy.ca  
Direct Line: 416-601-7835

E-mail: [jboscariol@mccarthy.ca](mailto:jboscariol@mccarthy.ca)  
LinkedIn: [www.linkedin.com/in/johnboscarioltradelaw](https://www.linkedin.com/in/johnboscarioltradelaw)  
Twitter: [www.twitter.com/tradelawyer](https://www.twitter.com/tradelawyer)