



**International Commission of Jurists Canada  
Commission Internationale de Juristes Canada**

Rapporteur Notes regarding 21 November 2016 Continuing Professional Development Event-

**“Modern Slavery in Supply Chains: Trends in Global Corporate Liability and Legislation”**

**Organized by**

The International Commission of Jurists Canadian Section (ICJC) in partnership with the Canadian Corporate Counsel Association (CCCA)

**Moderator**

Ms. Jennifer Egsgard, Vice- President (Ontario), International Commission of Jurists Canadian Section

**Speakers**

Ms Ruth Dearnley, Chief Executive Officer, Stop the Traffik (London)

Mr. Jonathan Drimmer, Vice President and Deputy General Counsel, Barrick Gold Corp.

Mr. Kevin McGurgan, UK Consul-General and Director-General of UK Trade and Investment in Canada

Mr. Peter Talibart, Managing Partner, Seyforth Shaw LLP London office

Ms. Mora Johnson, Barrister and Solicitor, Former Chair, OECD Forum on Responsible Mineral Supply Chains,

Mr. Mark Trachuk, Partner, Osler Hoskin & Harcourt LLP Toronto

The organizers would like to thank Matthew Levine for preparing this report.

## **1. Overview**

This event focused on the increasingly recognized issue of exploitative or forced labour, also known as “modern slavery”, in supply chains. In addition to severe harm to its direct victims, discovery of modern slavery in a supply chain can have material consequences for Canadian businesses. Leading jurisdictions, such as the U.K. and California, have passed laws to tackle this problem while others, such as France and the E.U., are moving in the same direction with legislation pending.

The event brought together legal experts as well as government and civil society representatives from the UK and Canada. All of the presenters offered unique perspectives on the problem of modern slavery based on their specific, complementarity expertise. Approximately 40 members of the Toronto legal community were in attendance. There was a Q & A session and reception following the formal presentation.

## **2. Presentations by the panellists**

*(a)* Ms. Ruth Dearnley, Chief Executive Officer, Stop the Traffik (London)

Ms. Dearnley presented Stop the Traffik’s campaigns related to modern slavery in terms of various everyday commercial products. She explained that a great deal of attention had been paid to ‘fast fashion’ clothing after a deadly industrial fire at the Rana Plaza in Bangladesh. But, she noted that behind the final product there were other production stages featuring perhaps even more exploitative labour conditions, e.g. the cultivation of cotton. Ms. Dearnley also highlighted the high risk of modern slavery in the chocolate supply chain. She described the conditions of young boys in producer states such as the Ivory Coast who would harvest cocoa every day without having ever seen a picture of a chocolate bar, i.e. the final product.

Ms. Dearnley explained that a great deal remains unknown about how modern slavery is organized for instance in the case of cocoa plantations and argued that an essential first step towards change was enhanced understanding. In this respect, Ms. Dearnley introduced a smart phone based application that had just been launched by Stop the Traffik. This application gathers and analyzes the ‘big data’ of trafficking.

*(b)* Mr. Jonathan Drimmer, Vice President and Deputy General Counsel, Barrick Gold Corp.

Mr. Drimmer introduced the experience of Barrick with human rights policies, which he described as a holistic endeavour. Mr. Drimmer explained that although Barrick is an extractives company, it actually sees the greatest risk of modern slavery in construction as well as in local communities adjacent to its mines.

Mr. Drimmer introduced the risk-based compliance program that Barrick implements, which includes due diligence at the on-boarding stage for both employees and vendors. For instance, he explained that in relation to employees, Barrick utilizes Trace International’s database and its own questionnaire to assess risk levels. In addition to due diligence, Barrick also deploys internal auditing to assess the degree of adherence to internal policies. As well, Mr. Drimmer noted that Barrick has a global policy of eschewing forced labour and that its contracts require counterparts to adhere to these standards.

(c) Mr Kevin McGurgan, UK Consul-General and Director-General of UK Trade and Investment in Canada

Mr. McGurgan presented the UK government's commitment to combating modern slavery and the steps that had led up to the 2015 legislation. He noted that British diplomats had recently received talking points on this issue and that it was a personal priority for Prime Minister Theresa May. Mr. McGurgan introduced the Prime Minister's recent appeal, in the margins of the UN General Assembly, to leaders of like-minded and priority countries. Ms. May has argued that just as we have stepped up international co-operation to crackdown on drugs trafficking and other organised crime, we need a similar co-ordinated effort to eradicate modern slavery.

(d) Mr. Peter Talibart, Managing Partner, Seyforth Shaw LLP London office

Mr. Talibart began his presentation by reminding the audience that human trafficking is the second largest source of illegal income worldwide exceeded only by drug trafficking. He went on to note a series of factors amounting to a perfect storm and three potential consequences going forward: Supply Chain Transparency being legally regulated in sophisticated legal systems as part of corporate governance law; directors and executives will be increasingly pursued if a brand is damaged because of an "ethical event" in a supply chain; and, responsible firms with integrated, inspected and monitored supply chains will become the investments of choice for investors. Mr. Talibart then reviewed the key legislation in this area, which allowed for a comparison of the approaches taken to date with that of, for instance, the European Union. He also noted the prospect of legislation being introduced by the United States Securities & Exchange Commission.

Finally, Mr. Talibart explained that Canadian companies may already be required to comply with modern slavery legislation. For instance, where a Canadian parent company or subsidiary is carrying on business in the U.K. and exceeds the global turnover threshold set out in the UK Act they will be required to produce the Transparency Statement covering their business and supply chain. As such, the Boards of medium and large Canadian firms should consider taking the following steps: developing a company/vendor policy that deals with labour practices and addresses slavery and human trafficking; conducting regular compliance audits of the company's business and supply chain to ensure compliance with the policy; and provide training to employees at all levels and to the Board.

(e) Ms. Mora Johnson, Barrister and Solicitor, Former Chair, OECD Forum on Responsible Mineral Supply Chains,

Ms. Johnson spoke on lessons learned from her long-term involvement in the development and implementation of supply chain due diligence related to conflict minerals. She described the 'soft law' conceptualized within the OECD, which included a 3rd party audit of due diligence practices at the supply chains choke point. This soft law was eventually recognized by the Final Rule of the US Dodd Frank Act s. 1502. Ms. Johnson noted that like the Modern Slavery Act, the OECD due diligence Guidance was drafted to be consistent with the UN Guiding Principles on Business and Human Rights, as well as the 2011 Revised OECD Guidelines for MNE

The following briefly summarizes the 'Lessons Learned' portion of Ms. Johnson's presentation: collective actions in the form of industry schemes are critical to success; interventions should take into account market incentives and be scalable; standards and laws should be complementary across jurisdictions and provide for mutual recognition; regulations must be carefully drafted to avoid unintended consequences; effective interventions require understanding supply chain pressure

points; multi-stakeholder engagement and oversight can build buy-in and credibility; sharing information about problems in supply chains increases effectiveness, signals responsible practices; implementation resources should be devoted 90% to capacity building of good faith efforts, only 10% to auditing; and, the crucial challenge is to develop a critical mass of actors globally.

(f) Mr. Mark Trachuk, Partner, Osler Hoskin & Harcourt LLP Toronto

Mr. Trachuk spoke to potential compatibility between Canadian securities law and certain requirements in the UK Modern Slavery Act. He suggested that an appropriate starting point was *National Policy 58-201 – Corporate Governance Guidelines* (“Guidelines”). Mr Trachuck noted that the Guidelines provide for the Board of an issuer to adopt a written code of business conduct and ethics (“Code”). He suggested that the matters covered by the Code could be expanded to incorporate supply chain transparency.

Mr Trachuk further explained that should the requirements under the Code be changed, this would have an effect on subsequent comply or explain disclosure. In order to achieve similar disclosure standards to the transparency statement contemplated in the UK Act, the following disclosure would be required: whether the issuer has adopted a written policy to ensure that its business operations, and its supply chain, are free from slavery and human trafficking; if the issuer has not adopted such a policy, disclose why it has not done so. If if the issuer has adopted such a policy, then disclose the following: a short summary of its objectives and key provisions, the measures taken to ensure that the policy has been effectively implemented, annual and cumulative progress by the issuer in achieving the objectives of the policy, and whether and, if so, how the board measures the effectiveness of the policy.