

PURSUING ETHICAL SUPPLY CHAINS: ESG AND HUMAN RIGHTS PRINCIPLES INCORPORATED IN FEDERAL PROCUREMENT POLICIES

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Effective April 1, 2023, the Canadian government implemented measures to strengthen federal procurement policies, integrating human rights, environmental, social, and corporate governance (“**ESG**”) principles, and supply chain transparency to its [Directive on the Management of Procurement](#) (the “**Directive**”). These measures were announced in [Contracting Policy Notice 2023-1](#).

Code of Conduct for Procurement Now Mandatory

The [Code of Conduct for Procurement](#) (the “**Code**”) is now mandatory for all federal procurements. It requires all suppliers and sub-contractors of goods and services to adhere to ethical and sustainability standards across their supply chains. For instance, under the Code, vendors and their sub-contractors must comply with Canada’s prohibition on the importation of goods produced, in whole or in part, by forced labour. If a supplier has not complied with this prohibition, Canada has introduced procurement contract clauses that permit the Government of Canada to terminate a contract without penalty (for more details on these clause, see our previous bulletin [here](#)).

This complements parliamentary efforts to increase transparency in supply chains. Bill S-211, *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, imposes new mandatory supply chain reporting for government institutions and many Canadians businesses. Federal government institutions that produce, purchase, or distribute goods in Canada will be required to file an annual report highlighting the steps it has taken prevent and reduce forced labour in its supply chain. Bill S-211 is expected to pass soon (for more details on the compliance obligations arising under this Bill, see our previous bulletin [here](#)).

Additional Measures to Reduce Unethical Business Practices

Amendments to the Directive also introduce new responsibilities for certain government stakeholders:

- Senior procurement officials must ensure procurement management frameworks respect human rights and ESG principles, and include measures to identify and mitigate risks of unethical business practices in

departmental supply chains.

- Federal government departments and agencies are expected to support procurement-planning and decision-making by identifying, mitigating and disclosing risks and occurrences that may have a negative impact on human rights and ESG considerations.
- They are also required to ensure that the intended outcomes of procurements include human rights considerations where appropriate, especially in markets where risks are highest.
- Federal government departments and agencies are also expected to coordinate with the relevant contracting authorities to ensure that suppliers doing business with the government operate in a socially responsible manner and that they apply ethical and sustainability standards across their supply chains.

Conclusion

While laudable, it is unclear how the government will track or enforce these new requirements. Once passed, the forced labour reporting obligations under Bill S-211 will provide government stakeholders some insight into risks of forced labour in their own supply chain and suppliers' efforts to reduce forced labour in their supply chains. Reporting under Bill S-211 may then be the first step to achieve the goals in these new policies.

As federal departments update their procurement frameworks, Canadian businesses (and other suppliers of the federal government) should be prepared for increased scrutiny relating to their ESG practices and their supply chains. These amendments are yet another step demonstrating the Canadian Government's commitment to ensuring that public money is spent in an ethical, sustainable, and responsible manner.

Previous McMillan Bulletins

For more information on recent procurement or forced labour updates see our previous bulletins:

- ["Seller Beware?": New Anti-Forced Labour Provisions in Federal Government Contracts](#) (January 2023)
- [Greening Procurement in Canada: New Implications for the Construction Industry and Beyond](#) (February 2023)
- [Canadian Businesses Should Prepare for New Mandatory Reporting on Supply Chains and Forced Labour](#) (March 2023)
- [Procurement in Ontario: Current State-of-Play](#) (March 2023)

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

The logo for mcmillan, featuring the word in a lowercase, sans-serif font. The 'm' and 'c' are in a dark red color, while the 'm', 'i', 'l', 'l', 'a', and 'n' are in a light blue color. The logo is positioned in the upper left corner of a banner image that shows a low-angle view of a modern glass skyscraper against a clear sky.

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