CANADA'S PASSAGE OF TRANSPARENCY MODERN SLAVERY LEGISLATION

EXPERIMENTAL REGULATION TO ADDRESS MODERN SLAVERY AND FORCED LABOUR IN GLOBAL SUPPLY CHAINS: CANADA'S PASSAGE OF TRANSPARENCY MODERN SLAVERY LEGISLATION

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Lay Abstract

This project explores the factors which influenced Canada to enact a transparency modern slavery law. The law requires companies to report their efforts to ensure their supply chains are slavery free. This project also evaluates Canada's overall strategy of using multiple regulatory techniques to fight modern slavery in global supply chains. Interviews with key informants, as well as an analysis of the relevant documents and regulatory techniques, revealed two main findings. Firstly, Canada adopted transparency legislation due to a combination of global and domestic factors, with domestic factors such as Canada's ties to the United Kingdom, and its powerful mining industry, playing a more significant role. Secondly, Canada's use of multiple regulatory techniques to fight modern slavery is currently ineffective, as these techniques do not complement each other, and are failing to improve labour standards in supply chains. This project suggests prioritizing empowering workers to protect their own rights.

Abstract

This thesis explores Canada's regulatory response to modern slavery in global supply chains. It investigates the factors which influenced Canada to enact transparency modern slavery legislation. It also analyzes Canada's strategy of utilizing multiple soft and hard law governance and regulatory techniques to strengthen its response to modern slavery. Using a theoretical framework which combines global governance and regulation literature with literature regarding the national institutionalization of global norms, this thesis examines how international actors that comprise the global anti-slavery network disseminate anti-slavery and corporate accountability norms. These norms are subsequently filtered through a country's domestic political economy, and are translated into either transparency or mandatory human rights due diligence (MHRDD) legislation.

The qualitative methods used in this thesis were documentary analysis and key informant interviews. Key informant interviews in conjunction with an analysis of relevant reports and parliamentary debates provided insight into the influences behind Canada's enactment of various governance and regulatory techniques. Doctrinal legal analysis, and an assessment of the various techniques implemented in Canada, revealed the effectiveness of the individual techniques and how they interacted with each other.

This thesis found that Canada adopted a transparency law due to a combination of: (1) International norm diffusion via an epistemic, global anti-slavery network; and (2) Canada's unique domestic political economy. Features of Canada's domestic political economy, including its affiliation as part of the Anglosphere, and its powerful mining industry, ultimately determined the enactment of transparency legislation. The thesis also found that Canada's use of multiple, increasingly hard law governance and regulatory techniques is currently ineffective as these techniques do not complement each other, and actually weaken Canada's regulatory response to modern slavery. Consequently, labour standards have not improved for supply chain workers. This thesis posits that Canada should prioritize centering and empowering workers to protect their own rights.

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List of Abbreviations

AFEP	Association Française des Entreprises Privées (French Association of Large Companies)
AFWA	Asia Floor Wage Alliance
APPG	All Party Parliamentary Group
ASSET	Alliance to Stop Slavery and End Trafficking
BAFA	Bundesamt für Wirtschaft und Ausfuhrkontrolle (Federal Office for Economic Affairs and Export Control, Germany)
BSCI	Business Social Compliance Initiative
BQ	Bloc Québécois
CAST	Coalition to Abolish Slavery & Trafficking
CAW	Canadian Auto Workers
CBC	Canadian Broadcasting Corporation
CBIS	Christian Brothers Investment Services
CBP	Customs and Border Protection
CBSA	Canada Border Services Agency
CCC	Canadian Chamber of Commerce
CCF	Co-operative Commonwealth Federation
CCFD	Comité Catholique contre la Faim et pour le Développement (Catholic Committee against Hunger and for Development, France)
CDU	Christlich Demokratische Union (Christian Democratic Union of Germany)
CEO	Chief Executive Officer
CFDT	Confédération française démocratique du travail (French Democratic Confederation of Labour)
CLC	Canadian Labour Congress
CNCA	Canadian Network on Corporate Accountability
CorA	Corporate Accountability Network
CORE	Canadian Ombudsperson for Responsible Enterprise
CPP	Canadian Pension Plan
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
CSU	Christlich Soziale Union (Christian Social Union of Germany)
CUSMA	Canada-United States-Mexico Agreement
DFAIT	Department of Foreign Affairs and International Trade
DI	Devonshire Initiative
DLR	Doctrinal Legal Research
EDC	Export Development Canada
EITI	Extractive Industries Transparency Initiative
EPZ	Export Processing Zone
ESDC	Employment and Social Development Canada
ESTMA	Extractive Sector Transparency Measures Act
ETI	Ethical Trading Initiative
EU	European Union
FCA	Foreign Corporate Accountability
FLA	Fair Labor Association

FOI	Freedom of Information
FTA	Free Trade Agreement
FWF	Fair Wear Foundation
G7	Group of 7
G20	Group of 20
GBCAT	Global Business Coalition Against Trafficking
GDP	Gross Domestic Product
GLJ-ILRF	Global Labor Justice-International Labor Rights Forum
GP	Guiding Principle
GSC	Global Supply Chains
GSI	Global Slavery Index
HRDD	Human Rights Due Diligence
HREDD	Human Rights and Environmental Due Diligence
ILO	International Labour Organization
IO	International Organizations
IOM	International Organization for Migration
LGBTQ	Lesbian, Gay, Bisexual, Transgender and Queer
MAC	Mining Association of Canada
MEDEF	Mouvement des Entreprises de France (Movement of the Enterprises of France)
MHRDD	Mandatory Human Rights Due Diligence
MHREDD	Mandatory Human Rights and Environmental Due Diligence
MNC	Multinational Corporation
MP	Member of Parliament
MSA	Modern Slavery Act
MSAB	Multi-stakeholder Advisory Body
MSI	Multi-stakeholder Initiative
NAFTA	North American Free Trade Agreement
NAP	National Action Plan
NCP	National Contact Point
NDP	New Democratic Party
NGO	Non-governmental Organization
OBE	Order of the British Empire
OECD	Organization for Economic Co-operation and Development
PC	Progressive Conservative Party
PDAC	Prospectors and Developers Association of Canada
PM	Prime Minister
RBI	Responsible Business Initiative
RIT	Regulatory Intermediaries Theory
SCFAIT	Standing Committee on Foreign Affairs and International Trade
SDG	Sustainable Development Goal
SPD	Sozialdemokratische Partei Deutschland (Social Democratic Party of Germany)
TFTEA	Trade Facilitation and Trade Enforcement Act 2015
TTCU	Tamil Nadu Textile and Common Labour Union
UK	United Kingdom

UN	United Nations
UNGC	United Nations Global Compact
UNGPs	United Nations Guiding Principles on Business and Human Rights
USA	United States of America
USW	United Steelworkers Union
WRC	Worker Rights Consortium
WRO	Withhold Release Order
WSR	Worker-Driven Social Responsibility

Introduction

> Forced labour and child labour have long permeated our everyday consumption. Generally, it is not the Canadian companies that are directly involved, but rather their subcontractors as well as their suppliers of raw materials and agricultural products. Therein lies the main risk: supply chains.
>
> —Senator Julie Miville-Dechêne, *Hansard*, *2021*

In 2018, it was widely reported in the media that there were 40.3 million people living in modern slavery, of whom 24.9 million were in forced labour (Walk Free Foundation, 2018). Modern slavery is an umbrella term covering a range of practices including forced labour, which the International Labour Organization (ILO) defines as "all work or service which is exacted from any person under the menace of any penalty, for which the said person has not offered himself voluntarily" (International Labour Organization, 1930). I became interested in researching modern slavery in global supply chains (GSCs) in 2019 when these global estimates, produced by Australian charitable foundation Walk Free, were being quoted in policy debates globally and in Canada. These estimates, by seemingly emphasizing the scale and severity of modern slavery, aimed to spur states into action to address the issue of modern slavery and forced labour. Upon further exploration of this topic, I discovered that debates regarding modern slavery and the best solutions to combat it had been gaining traction internationally for many years.

In 2012, former President of the United States of America (USA) Barak Obama identified modern slavery as the true name of human trafficking, that is, the movement of people by coercion for the purpose of exploitation (Obama, 2012; United Nations, 2000). Subsequently, there has been a great deal of political and policy attention paid to eradicating modern slavery. Indeed, the next year, Walk Free issued its first Global Slavery Index (GSI),

estimating that 29.8 million people lived in conditions of modern slavery in 2013 (Walk Free Foundation, 2013). In 2017 Walk Free joined forces with the ILO and International Organization for Migration (IOM) to produce the Global Estimates of Modern Slavery, where they conjectured that there were 40.3 million people living in modern slavery, with 24.9 million in forced labour (Walk Free Foundation et al., 2017). By 2021, the estimate of the number of people in conditions of modern slavery had risen to 50 million, with 28 million in forced labour (Walk Free Foundation, 2023). Despite questions about the reliability of the estimates (Phillips, 2018), these figures added to the immense pressure from international organizations (IOs) being placed on states to address the issue of modern slavery in GSCs.

In 2015, the United Nations (UN) Target 8.7 of the Sustainable Develop Goals (SDGs) urged member states to take immediate and effective measures to end child labour by 2025 and forced labour and modern slavery by 2030. Organizations such as Walk Free, the ILO and the International Trade Union Confederation (ITUC) identified GSCs — goods and services which cross international borders — as vectors of forced labour and modern slavery (International Trade Union Confederation, 2017; Walk Free Foundation, 2018). The Group of Seven (G7), the seven countries with the world's most advanced economies including Canada, committed to "redoubling our efforts to achieving the eradication of forced and child labour" (G7, 2017, p. 30). The Group of Twenty (G20), the twenty countries with the world's leading and emerging economies of which Canada is also a member, committed to developing policy frameworks and underlining the responsibility of business to conduct due diligence to promote decent work and sustainable global supply chains free from slavery (German Federal Ministry of Labour and Social Affairs, 2017). Clearly, eradicating modern slavery in GSCs was a hot button topic and as a result, states, IOs, and civil society organizations (CSOs) began to adopt and implement a range of regulatory and governance techniques to increase corporate

transparency and accountability for modern slavery in GSCs. Canada was not an exception as it faced increasing international and domestic pressure to address modern slavery in GSCs.

Since the 1980s, corporate self-regulation via corporate social responsibility (CSR) initiatives such as codes of conduct, certification schemes and social auditing have been the standard way for multinational corporations (MNCs) that utilize supply chains to address the problem of labour exploitation. My interest was the claim that CSR initiatives needed to be hardened, that is, that public policy needed to shift away from voluntary, corporate self-regulation to mandatory, state-based regulation of corporations to effectively tackle modern slavery in GSCs. States initially did two things to achieve this shift. The first was to pass transparency modern slavery laws which made it mandatory for companies to report whether or not they had taken steps to ensure their supply chains were free from slavery. These laws included the California Transparency in Supply Chains Act 2010, the United Kingdom (UK) Modern Slavery Act 2015, and the Australian Modern Slavery Act, 2018. A second generation of these laws emerged soon after called mandatory human rights due diligence (MHRDD) legislation. They were wider in scope than transparency laws, mandating companies to conduct due diligence to prevent or mitigate human rights and in some cases environmental abuses in supply chains. The French Corporate Duty of Vigilance Law 2017 ushered in MHRDD legislation, and was significant because civil liability could be imposed against companies which fail to adhere to the law's requirements. In 2021, Norway, Germany and Switzerland also enacted MHRDD laws.

In 2020 Canada was beginning to make this transition from voluntary to mandatory, state-based corporate regulation as it introduced various regulatory responses to modern slavery. The federal government implemented of the Canadian Ombudsperson for Responsible Enterprise (CORE), which is meant to hold Canadian MNCs accountable for human rights abuses in their supply chains, and an import ban to prohibit goods produced with forced labour

from entering Canada. Furthermore, in a landmark ruling by the Supreme Court of Canada in *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, it was held by a thin majority that corporations could be sued directly under customary international law in their home state for tortious harms caused by their subsidiaries. In addition, there were discussions about introducing legislation in Canada to combat modern slavery in GSCs. Although draft transparency modern slavery legislation had been tabled in the Canadian parliament, the type, scope and stringency of the law that would be passed had not yet been determined when I began this research in 2019. The dominant narrative was that Canada was falling behind.

The variation in domestic regulatory responses sparked my curiosity as to the reason or reasons why countries were responding differently to the issue of modern slavery in GSCs, that is, by enacting either transparency or MHRDD legislation. More specifically, I wanted to understand why transparency as opposed to MHRDD legislation was tabled in the Canadian parliament, and Canada's overall regulatory response to modern slavery in GSCs in general. In 2020 this included proposed transparency modern slavery legislation, CORE, a forced labour import ban and significant developments in transnational litigation. It was therefore clear that Canada was attempting to increase corporate transparency and accountability by implementing multiple hard law mechanisms. This later included the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, the transparency modern slavery law Canada enacted in 2023.

I wanted to explore how effective these mechanisms were individually and also how effectively they interacted with each other. I therefore formulated three research questions to understand Canada's regulatory position regarding modern slavery in GSCs: (1) What are the range of governance and regulatory techniques devised to combat modern slavery in global supply chains?; (2) What factors influenced the introduction of modern slavery transparency legislation into the Canadian parliament to combat forced labour in supply chains?; and (3)

Where is Canada situated in the landscape of emerging regulatory techniques to combat forced labour in supply chains?

This thesis argues that Canada adopted transparency modern slavery legislation due to a combination of: (1) International norm diffusion via an epistemic, global anti-slavery network; and (2) Canada's unique domestic political economy. The thesis also argues that Canada's layering of multiple, increasingly hard law regulatory and governance techniques is currently ineffective as these techniques do not work to complement each other and actually weaken Canada's regulatory response to modern slavery in GSCs.

Regarding the importance of this research, the ILO estimates that the total illegal profits made annually from forced labour is US$236 billion, with the majority of victims concentrated in industry (mining and quarrying, manufacturing, construction), services (wholesale and trade, accommodation and food service activities, transport), agriculture and domestic work (International Labour Organization, 2024, p. 16). According to Walk Free, "the purchasing practices of wealthier governments and businesses fuel exploitation in lower-income countries that are at the frontlines of global supply chains" (Walk Free Foundation, 2023, p. 4). G20 countries account for over 75 percent of the world's trade, with many consuming products produced with forced labor such as electronics, garments, palm oil and textiles (Walk Free, 2023). There is increasing concern about modern slavery among civil society, consumers, investors and policymakers, who are calling for MNCs to take greater accountability for labour standards in their GSCs. Various transnational governance and regulatory techniques, including UN Guiding Principles on Business and Human Rights (UNGPs) 2011, transparency and MHRDD legislation, transnational litigation and forced labour import bans, have emerged in response to these calls. This thesis performs the crucial work of evaluating the effectiveness of these regulatory mechanisms generally, and specifically within the Canadian context. It is necessary to understand whether these regulatory interventions are beneficial in improving the

labour conditions of supply chains workers, and if not how they can be improved to fulfil their designated purpose.

This introduction begins by discussing the terminological debates over the meaning of modern slavery, which greatly influences the policies implemented to address the issue. It then explains why and how the thesis brings two literatures, that is, global governance and regulation, and national institutionalization of global norms, into conversation to address the research questions. A combination of these literatures was necessary due to the research questions being multi-scalar in nature, that is, they have global and domestic components which needed to be addressed to fully understand Canada's regulatory response to modern slavery in GSCs. This will be followed by an outline of the thesis' contributions, as well as a description of the methodology used to answer the research questions. Lastly, an overview of the thesis chapters including their contents and arguments is provided.

Terminological Debates: The Meaning of Modern Slavery

Terminological debates regarding the meaning of modern slavery are mainly split between two academic approaches. The first, referred to as modern slavery approaches, believes that defining and measuring slavery is the best way to achieve its abolition (Mende, 2019). The second approach, referred to as critical approaches, believes that definitions of modern slavery actually prevent abolition efforts (Mende, 2019). While the goal of both these academic approaches is to achieve the eradication of modern slavery, they clash when it comes to determining the scope of modern slavery and strategies for its eradication.

These debates stem from the fact that there is no single legal definition of modern slavery and its scope and forms (Quirk, 2012; Mende, 2019). Definitions of slavery in key international instruments which serve as the basis for contemporary definitions include the 1926 Slavery Convention of the League of Nations which defines slavery as "the status or

condition of a person over whom any or all of the powers attaching to the right of ownership are exercised" (League of Nations, 1962, article 1). The 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery reiterates this definition and also includes definitions of debt bondage, forced marriage, and the exploitation of children (United Nations, 1956). The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the 2000 UN Convention against Transnational Organized Crime, contributes to policies defining the movement of people for the purpose of their exploitation as slavery (United Nations, 2000).

Contemporary human rights activists have used the themes of ownership and exploitation to assist in defining where slavery begins and ends, that is, to determine what circumstances are sufficiently similar to historical slave systems such as the transatlantic slave trade, as to be deemed instances of slavery (Quirk, 2012). However, this is a difficult given that slavery has ostensibly been abolished and formal ownership is illegal in most cases (Quirk, 2012; Mende, 2019). Therefore, instead of relying on established legal instruments, modern day human rights activists have favoured their own definitions of slavery where ownership or possession has been redefined as control (Quirk, 2012; Allain, 2013; Hickey, 2013; Mende, 2019).

The most popular of these new definitions was formulated by Kevin Bales, who was the lead author of Walk Free's GSI in 2013, 2014 and 2016, and "emphasises that modern slavery is embedded in the global economy and connected across the world via supply chains" (Fudge, 2024, p. 79). Bales defined modern slavery as "a social and economic relationship in which a person is controlled through violence or its threat, paid nothing, and economically exploited" (Bales, 2005, p. 4). Activists such as Bales who believe in defining modern slavery therefore focus on three main components; "control of a person over another", "an involuntary aspect in their relation", and "the element of exploitation" (Mende, 2019, p. 233). While such

definitions are not without merit, they suffer shortcomings such lacking a clear legal foundation leaving too much room for interpretation as to what slavery might look like, and condensing slavery to economic goals when in some cases the goal is marginalization (Quirk, 2012; Mende, 2019). Furthermore, some forms of slavery are not characterized by threats of violence, and the involuntary aspect is often not nuanced enough to account for economic circumstances such as poverty, structural racism and limited access to education which force people into dangerous work (Mende, 2019). Nevertheless, those who advocate for defining and measuring modern slavery, while aware that too broad definitions become useless, believe that such definitions capture culturally different forms of slavery and are conceptually and theoretically specific enough to tackle the issue socially, legally and politically (Choi-Fitzpatrick, 2012; Bales, 2013; Mende, 2019).

In contrast, critical approaches believe that definitions of modern slavery as a distinctive evil tend to separate it from other forms of indecent working conditions and exploitation. They believe that definitions detach modern slavery from its surroundings and the circumstances that enable it, and largely propose to dismiss the concept of modern slavery entirely (Mende, 2019). Definitions require an imagined line between free and unfree, and just and unjust working conditions, implying a demarcation between appropriate and inappropriate forms of exploitation (O'Connell Davidson, 2010). That is, if slavery encompasses everything bad or inappropriate and excludes everything else, then everything else is by implication appropriate (O'Connell Davidson, 2015). Indecent working conditions and forms of exploitation not deemed modern slavery can therefore potentially be neglected at the political level.

Critical approaches are also sceptical of the broad political consensus against practices being deemed modern slavery, such as trafficking, as this leads to depoliticization of the issue. An example of this is the coalition of some feminists and the religious right disregarding their

ideological differences to fight against the commercialization of sex (Weitzer 2007). The coalition regards both enforced prostitution and sex work as modern slavery, which not only neglects important differences between the two but prevents political and analytical accuracy (Aradau 2008; O'Connell Davidson 2010). Trafficking as slavery also leads to repressive anti-slavery policies which criminalize and demonize sex work, and conveniently aligns with political agendas to restrict not only trafficking but migration more generally (Aradau 2008). Additionally, the political use of the term modern slavery as a rhetorical device to harness the moral outrage of the transatlantic slave trade is heavily scrutinized in critical approaches (Quirk, 2012; Bunting & Quirk, 2017; Fudge, 2024). Instead of the focus being on the rights of workers and their empowerment through worker voice, the effect of this framing objectifies these individuals as modern day slaves and passive victims in need of rescue by saviours (Mende, 2019).

To help overcome the issue of modern slavery being dichotomously separated from other forms of indecent work and exploitation, some critical approaches support a continuum model (Skrivankova, 2010; Choi-Fitzpatrick 2012; Mende, 2019; Boersma & Nolan, 2022). On one end of the continuum for instance is decent work, which is productive and secure, provides an adequate income, respect for labour rights, social protection, social dialogue, participation, union freedom, collective bargaining (Ghai, 2006; Skrivankova, 2010). On the other end is modern slavery practices such as forced labour, with a complex combination of situations existing in between (Skrivankova, 2010). Continuum models also account for the fact that a worker's experience can begin as acceptable work and gradually worsen into forced labour (Skrivankova, 2010, p. 19; Boersma & Nolan, 2022).

While it is important to acknowledge that modern slavery may overlap with other types of exploitative labour arrangements, this is beyond the scope of this thesis. This thesis addresses Canada's regulatory efforts to combat modern slavery in GSCs. The focus will be on

forced labour and child labour, which is "work which is mentally, physically, socially or morally dangerous and harmful to children; and/or interferes with their schooling" and in its worst forms includes all forms of slavery and prostitution of persons under the age of 18 (International Labour Office, 2002, p. 15; International Labour Organization, 1999). These are the modern slavery practices most relevant to the thesis as they are the subjects of Canada's *Fighting Against Forced Labour and Child Labour in Supply Chains Act* 2023 and import ban. The next section will explain the theoretical framework of the thesis, which combined global governance and norm diffusion literatures to address the research questions.

Global Governance and National Institutionalization of Global Norms

Due to the territorial nature of labour laws, states are restricted in their ability to regulate the overseas activities of MNCs headquartered in their countries. This is why modern slavery in GSCs, which extend across national borders, is such a challenge to regulate. To understand how states were dealing with this problem, and to develop a frame of reference for research question one, I drew on global governance and regulation literature. This literature describes a range of global governance and regulatory techniques developed to tackle transnational labour issues which national governments cannot regulate alone. Network or assemblage governance, where a variety of actors join forces to combat a transnational problem is one such technique (Deleuze & Guattari, 1987; Foucault, 1979; Rose & Miller, 1992). As Chapters One and Two will explain, network governance accounted for the international diffusion of anti-slavery and corporate accountability norms by an epistemic, global anti-slavery network composed of states, non-governmental organizations (NGOs), CSOs and IOs such as the UN, ILO and Walk Free via soft law guidelines such as the UNGPs 2011. Transparency and MHRDD laws are based on the human rights due diligence process outlined in the UNGPs (United Nations, 2011). As Chapter One will explain, the UNGPs were ambiguously drafted and in turn, the

jurisdictional variations of transparency and MHRDD laws can be partly attributed to this ambiguity.

Global governance techniques also include reflexive law and responsive regulation. Reflexive law encourages companies to implement self-corrective measures sensitive to external norms, after internal reflection regarding corporate failure to adhere to the relevant norms (Wen, 2016). Responsive regulation refers to the state escalating its regulatory response with increasingly hard law mechanisms if companies fail to adjust their corporate practices to the standard required (Ayres & Braithwaite, 1992). These regulatory techniques explained the emergence of modern slavery laws, which although hard law are reflexive in nature, in response to the global anti-slavery network's promotion of anti-slavery and corporate accountability norms. Modern slavery laws also represent an escalation in the state's response to the failure of MNCs to cease human rights violations abroad, along with other hard law mechanisms such as forced labour import bans, which are being layered over each other to strengthen the state's regulatory response (Mahoney & Thelen, 2009). However, global governance and regulation literature alone could not explain the variation in regulatory responses at the domestic level, and in particular, why anti-slavery and corporate accountability norms were being translated into transparency laws in some countries while others were adopting MHRDD legislation.

Literature pertaining to the institutionalization of global norms in the national context was used to explain the variations in regulatory responses at the domestic level. Combined with the global governance and regulation literature, this completes the theoretical framework of the thesis. As Chapter Two discusses, global anti-slavery and corporate accountability norms are not automatically diffused into the national sphere. These norms are filtered through the unique domestic political economy of each country where they are contested and shaped to better fit with local norms (LeBaron & Rühmkorf, 2019). Consulting this literature was key as a frame of reference for research questions two and three which deal with Canada's domestic landscape

regarding regulation of modern slavery in GSCs. It was especially crucial for understanding why transparency modern slavery legislation was tabled in the Canadian parliament and eventually enacted. Several features of a country's domestic political economy can impact the type and stringency of modern slavery law adopted, as well as what other mechanisms are implemented and their rigour.

Regarding Canada's domestic political economy for instance, as the thesis will explain, Canada's affiliation as part of the Anglosphere, a group of English speaking countries including the United States of America (USA), UK and Australia with similar economic and political traditions that favour light-touch regulation, greatly influenced the enactment of transparency legislation. Canada's powerful mining industry, which has close ties to the Liberal and Conservative political parties and has historically lobbied against increased regulation of the industry, not only influenced enactment of transparency legislation but the strength of CORE's mandate. Canada's trade relationship with the USA was the impetus behind its implementation of a forced labour import ban which was a condition of the Canada-United States-Mexico Agreement (CUSMA). Therefore, although international norm diffusion plays a key role, the way in which international norms are filtered through a country's domestic political economy is the ultimate determinant of its regulatory response.

Thesis Contributions

The main contribution of this thesis is to show that two sets of literatures, that is, global governance and regulation literature and national institutionalization of global norms literature, must be brought into conversation to fully address the way in which global anti-slavery and corporate accountability norms become embedded in the national context. Global governance and regulation as a framework, although helpful for understanding the various global governance and regulatory techniques being implemented by states to address modern slavery

in GSCs, does not explain how these techniques become entrenched nationally and why they vary in each country. Global governance techniques need a national anchor because that is where enforcement lies. By using global governance as a frame and applying key concepts from this literature to how global norms become nationally embedded via active norm diffusion, this thesis was able to explain the varying regulatory responses of different countries to modern slavery in GSCs. Furthermore, an in-depth inventory and analysis of the different governance and regulatory techniques is also conducted, specifically in the Canadian context. This study therefore advances the literature with regards to: (1) The factors which influence national governments in implementing global governance and regulatory initiatives to combat modern slavery in GSCs; and (2) How these initiatives overlap and interact with each other.

Regarding modern slavery legislation specifically, while the drivers behind the enactment of modern slavery laws in various jurisdictions such as the UK, France and Germany have been investigated (LeBaron & Rühmkorf, 2019; Evans, 2020; Weihrauch et al., 2023), there has been no such in-depth study focused on Canada. This thesis is therefore significant because it provides a Canadian case study as an example of national institutionalization of global norms. This thesis also contributes to global governance literature by showing how networks or assemblages form and can be used by international actors to influence domestic legislative processes. In this case, it shows how an epistemic global anti-slavery network disseminating norms at the international level influenced the enactment of legislation and other regulatory mechanisms in states to combat modern slavery in GSCs. This study also advances the debate as to the effectiveness of reflexive and responsive regulation as indirect means by which the state steers corporations into changing harmful corporate practices.

Finally, the thesis emphasizes the importance of worker voice and involvement in the design and implementation of every governance and regulatory technique implemented, instead of treating supply chain workers like passive victims. As previously noted, the anti-

slavery and corporate accountability norms generating these regulatory initiatives, and modern slavery laws in particular, stem from the UNGPs which take a human rights approach as opposed to a labour law approach. Workers have historically exercised agency and institutionalized norms using labour law techniques such as collective bargaining and public enforcement. The human rights approach tends to ignore these techniques, leading to questions about whether the focus is on improving labour law standards or only extreme violations of human rights. The thesis discusses emerging techniques aimed at worker empowerment such as the paradigm of worker-driven social responsibility, where workers are educated about their rights and can use their voices to speak up about violations, which allows them to participate in the protection of their own rights.

Methodology

In order to investigate the factors which led to Canada's enactment of transparency legislation and its overall regulatory strategy to combat modern slavery in GSCs, I used a combination of qualitative methods, that is, documentary analysis and key informant interviews, as well as doctrinal legal research.

The first set of documents which provided background information and context for this study was House of Commons and Senate Debates (Hansard) from 2016 to 2023. These records are publicly available and were obtained via the Parliament of Canada website. Parliamentary sessions highlighting modern slavery and forced labour were useful in determining how Canada was dealing with these issues from a regulatory standpoint, during the Trudeau Liberal government's three consecutive terms in office since 2015. The debates provided information regarding modern slavery bills tabled in 2018, 2020, 2021 and 2022, as well as which political parties and parliamentarians supported transparency legislation or mandatory human rights due diligence legislation. These debates also provided information on Canada's implementation of

CORE and various free trade agreement negotiations, such as CUSMA, and the forced labour import ban which was a condition of this agreement. These documents therefore providing insight on Canada's overall regulatory strategy with regards to modern slavery.

The second set of documents was the October 2018 parliamentary report *A Call to Action: Ending the Use of All Forms of Child Labour in Supply Chains,* along with its witness testimonies and written briefs. This report contains the findings from a study on child labour and modern slavery in supply chains conducted during November and December 2017 by the Subcommittee on International Human Rights of the House of Commons Standing Committee on Foreign Affairs and International Development. This pivotal study examined various options to eradicate modern slavery in supply chains, with one of the recommendations being the enactment of legislation in Canada. The Subcommittee received testimonies and written briefs from a diverse group of witnesses including IOs, NGOs, government representatives and lawyers. These reports, testimonies and briefs are publicly accessible via the Parliament of Canada website.

The third set of documents was from the Employment and Social Development Canada (ESDC) led stakeholder consultations from May to July 2019. These consultations were held in response to the 2018 *A Call to Action* report's recommendation to advance initiatives, such as potential legislation, to motivate businesses to eliminate modern slavery from their supply chains. A Freedom of Information (FOI) request was made to ESDC on June 17, 2020 for any transcripts, minutes or notes associated with the consultations. ESDC provided a spreadsheet and portable document format (PDF) with the some of the participants (which included employer and industry associations, businesses, civil society and labour organizations, and law firms) and their written responses to the questions posed about the design and stringency of potential modern slavery legislation. In addition to these FOI documents, ESDC released the

Labour Exploitation in Global Supply Chains: What We Heard Report in March 2022, which provided further details about stakeholders' opinions about legislation.

These three sets of documents provided insight into governance and regulatory techniques being used globally and in Canada to combat modern slavery. They assisted with the identification of central events and themes important to the narrative of Canada's overall regulatory strategy. Crucially, these documents were used to compile a list of key informants to interview and provided leads for formulating interview questions.

Interviewees were selected if there was indication that they were instrumental in or had knowledge relating to the passage of Canada's modern slavery act. Hansard debates about modern slavery legislation, as well as testimonies and briefs submitted as part of the 2017 parliamentary study were particularly useful in selecting parliamentarians and representatives of various organizations involved in discussions about enacting a law in Canada. These key informants were separated into two categories, the first being "parliamentarians" and the second being "other stakeholders". This division made it possible to ask parliamentarians involved in the debates more direct questions about the legislation's passage in addition to the more general questions about Canada's overall regulatory strategy regarding modern slavery. Other stakeholders included government officials, international organizations, civil society organizations, business associations, one lawyer and one small business (larger businesses such as Loblaw Companies Limited and Canadian Tire declined the interview request). This division of interviewees also simplified the interview guides for the ethics approval process. A total of 23 interviews lasting approximately one hour each were conducted between October 2021 and February 2022 via Zoom. A list of all interviewees is set out in ***Table 1 - Key Informant Interviews***.

A semi-structured interview format revolving around the central themes of the thesis was used to efficiently utilize the limited time of interviewees. Although purposive sampling

was initially used, it was combined with snowball sampling as interviewees suggested colleagues, acquaintances and business representatives that would be knowledgeable about this topic and should also be interviewed. Approaching the end of the interview phase, interviewees were suggesting persons that had already been interviewed or contacted which indicated empirical saturation. All interviewees consented to forgo anonymity as much of their work and statements made regarding modern slavery is already in the public domain. The interviews were transcribed by Zoom, edited for errors and the transcripts uploaded to MAXQDA which is a software used for coding and analysis.

Qualitative thematic analysis was used to code interviews using mainly a deductive approach but also inductively (Fereday & Muir-Cochrane, 2006). Deductive coding included using a preliminary set of codes informed by the background documents and literature review of recurring factors present in the different jurisdictions where modern slavery legislation had been enacted. This included for instance coding for business opposition against legislation. An inductive approach however was used to code segments of data where new insights or themes specific to Canada were observed such as the historic influence of the mining industry. Similar codes were categorized or grouped together under different themes, and in some cases subthemes were also identified. All codes relating to civil society for instance were grouped under the theme of the "persistence of civil society" in advocating for legislation. However the "divergent views of civil society" regarding whether transparency legislation should be enacted as a first step emerged as a subtheme.

Limitations encountered with the interviews included some potential interviewees, such as New Democratic Party members of parliament, not responding to or declining the interview request. There was also an instance where a key informant could not clearly recall the details of an event. Such limitations, where parts of the narrative could have potentially been left out, were addressed by means of triangulation with the documents, such as the Hansard, written

briefs submitted for the 2017 parliamentary study, or other interview transcripts which covered the same events. Newspaper articles discussing the events in question were also used to provide accurate historical context and fill in any gaps.

In addition to qualitative methods, doctrinal legal research (DLR) was also used when considering the potential impact of Canada's modern slavery act, and the various models of modern slavery legislation generally, with regards to increasing corporate accountability and improving labour standards for supply chain workers. Doctrinal or black-letter research focuses on interpretation and analysis of mainly primary source materials including legislation and case law. It is "research which asks what the law is in a particular area" and involves assessing "the wording of the statutory provision, its mode of operation and potential impact through legal interpretation" (Rühmkorf, 2018, p. 153). In carrying out this process all relevant sources, including modern slavery laws in multiple jurisdictions and any associated case law, were gathered. All the legislation was sourced from the relevant government websites using Google searches with the terms "modern slavery law" or "due diligence law" in conjunction with the country. To retrieve any associated case law cited in the academic literature, the case name was entered into the legal database Nexis Uni to obtain the full case.

A systemic comparative analysis of Canada's legislative proposals, modern slavery act, and legislation in other jurisdictions was conducted to compare and contrast differences and similarities of these laws domestically and globally (Bhat, 2020). This comparison assisted with the creation of a typology of modern slavery laws and provided a framework for critiquing the various models of legislation. Critique included for instance reference to case law which showed that these laws could have unintended effects based on the court's interpretation and due to imprecise wording which may actually shield companies from liability. An analysis of the ways in which Canada's modern slavery legislation could potentially interact with other

legislated state mechanisms such as Canada's forced labour import ban was also conducted using DLR.

Doctrinal legal research has been criticized for being an exercise often isolated from how the law actually functions in society, that is, it focuses on the law in books as opposed to the law in action (Rühmkorf, 2018; Bhat, 2020). To combat this limitation this thesis utilized a combination of doctrinal and socio-legal research in the form of key informant interviews. The interviews provided a deeper understanding of how these laws operate in reality, whether supply chain workers are truly the beneficiaries, and allowed stakeholders to state their opinions about how these laws can be improved.

The qualitative methods used in this thesis, that is, documentary analysis and key informant interviews, as well as DLR, were effective in uncovering the factors which led to the enactment of transparency modern slavery legislation in Canada, and analyzing the effect of said legislation in improving labour standards in supply chains.

Chapter Overview

This thesis argues that the filtering of international anti-slavery and corporate accountability norms through Canada's domestic political economy led to Canada enacting a transparency modern slavery law. It also argues that Canada's layering of increasingly hard law mechanisms is actually weakening its regulatory response to modern slavery in GSCs, as these mechanisms as currently designed do not complement each other. The findings were not entirely predetermined conclusions when this thesis was conceptualized in 2020. The importance of global governance and regulation in explaining the emergence of various global governance mechanisms and the role of the global anti-slavery network in norm dissemination was evident from the beginning. However, the importance of global norms being contested at the national level, rather than being automatically diffused, really became apparent during the

data collection stage where key informant interviews revealed the importance of the domestic landscape in determining the type and stringency of regulatory mechanisms implemented in Canada. The progression of how the thesis developed is set out in this chapter overview, which explains the contents and arguments of each of the thesis' five chapters and conclusion.

The theoretical framework of the thesis is presented across Chapters One and Two. Chapter One provides a literature review of the global governance and regulatory techniques being used to combat modern slavery in GSCs. It draws on new governance theory to explain the emergence of reflexive modern slavery laws, the use of responsive regulation by the state and the epistemic, global anti-slavery network disseminating anti-slavery and corporate accountability norms. It highlights the importance of the collapse of the Rana Plaza complex in Bangladesh in 2013, where more than 1,100 supply chain factory workers were killed, in spurring states to harden the voluntary, soft law, CSR initiatives which have been used since the 1980s to regulate MNCs. The increase in hard law mechanisms globally and in Canada, including transparency and MHRDD laws, CORE, transnational litigation and forced labour import bans post Rana Plaza is a key argument. Another important argument is that the transition from soft to hard law mechanisms does not involve the displacement of any of these regulatory tools. Instead increasingly hard law is being layered over the soft law initiatives so that Canada is utilizing both types of initiatives to strengthen its regulatory response. The introduction of the various global governance and regulatory techniques in this Chapter sets the foundation for Chapter Two.

The theoretical framework of the thesis is completed in Chapter Two. The Chapter draws on the discussion of global governance techniques provided in Chapter One, and focuses on the role of the global anti-slavery network. Using the theory of regulatory intermediaries it shows how the transnational organizations which comprise the global anti-slavery network act as intermediaries between national governments and MNCs, by promoting anti-slavery and

corporate accountability norms via soft law such as the UNGPs. The theory of norm diffusion is used to further this argument by showing that rather than being automatically diffused into the national context, these laws are filtered through a country's domestic political economy where they are contested and shaped to fit with local norms. This is a central argument of the thesis as it explains the variation in regulatory responses at the domestic level, particularly why transparency as opposed to MHRDD laws have been adopted in some jurisdictions. The second half of the Chapter explores domestic factors which were important in the enactment of transparency and MHRDD legislation in the UK, France and Germany. These countries provided three unique experiences which could be compared and contrasted with Canada. The domestic factors explored included the persistence of civil society in advocating for or against legislation, business opposition or support for legislation, political and economic regulatory tradition, governing political party ideology, and support of key parliamentarians, all of which are important themes in the thesis.

Chapter Three marks the beginning of the Canadian case study. Its structure was inspired by crucial information gleaned from the key informant interviews about Canada's mining industry and how its history of resisting more robust regulation was linked to Canada's enactment of transparency legislation. I discovered that the failed passage of Bill C-300 in 2009, which sought to strengthen regulation of the mining industry, was due to the mining industry's influence on not only the Conservative political party but the Liberal party as well. Furthermore, I found out that the backlash from the mining industry over Bill C-300 played a part in Member of Parliament (MP) John McKay's tabling of transparency legislation in the Canadian parliament in 2018, nine years after he tabled Bill C-300. I realized that events that occurred when the Harper Conservative government was in power were connected to the enactment of transparency legislation during the current Trudeau Liberal era. Consequently Chapter Three focuses on the Conservative era from 2006-2015. It is structured in two parts.

The first part outlines key features of Canada's domestic political economy relevant to the second part of the Chapter as well as Chapter Four. This includes Canada's connection to the Anglosphere, its trade relationship with the USA, political party ideology, the power of the mining industry and CSOs which oppose its harmful activities abroad. The second half of the Chapter discusses the mining industry's efforts to resist regulation during the Conservative era, and the Harper Conservative government's support for continued voluntary, corporate self-regulation through initiatives such as the Extractive Sector CSR Counsellor and the Extractive Sector Transparency Measures Act (ESTMA) 2014. This Chapter therefore sets the foundation for Chapter Four by arguing that these regulatory events during the Conservative era influenced the enactment of transparency legislation.

Chapter Four presents the climax of the Canadian case study by focusing on the Liberal era from 2015 to 2023. It shows the way in which features of Canada's domestic political economy outlined in Chapter Three influenced the adoption of hard law mechanisms during this period, and emphasizes the importance of international pressure in forcing the Liberal government to enact a modern slavery law. The Chapter first explores the international pressure on the newly elected Trudeau Liberal government to address modern slavery, including a 2017 Canadian parliamentary study on child labour and modern slavery which was attended by predominantly Anglo-American international organizations recommending that Canada pass legislation. It then looks at the Liberal government's regulatory response to this pressure which included implementation of CORE, and a forced labour import ban. Finally, the Chapter sets out the events surrounding the passage of Canada's modern slavery act. The role of international pressure is highlighted, as Chinese and Malaysian personal protective equipment (PPE) made with forced labour entering Canada during the Covid-19 pandemic made legislation a priority for Liberal government. Key informant interviews were crucial in mapping the parliamentarians, business associations, and CSOs supporting or opposing either

transparency or MHRDD legislation. The Chapter underscores the combined support of the Liberal and Conservative parties for transparency legislation, and the overall similarity of Liberal and Conservative eras in continuing the trend of light-touch regulation of MNCs.

Chapter Five brings the thesis full circle as it takes an in depth look at the individual and collective effectiveness of the global governance and regulatory techniques outlined in Chapter One and discussed throughout the chapters. The Chapter first sets out a typology of the various models of modern slavery legislation, that is, transparency, MHRDD and MHRDD legislation with civil liability. The Chapter critiques each model and challenges the notion of MHRDD legislation being a solution to companies' cosmetic compliance with transparency law. The Chapter then assesses Canada's strategy of layering increasingly hard law mechanisms over voluntary, soft law mechanisms, to strengthen its regulatory response to modern slavery in GSCs. The Chapter argues that although these mechanisms are meant to work in tandem, as currently designed one mechanism such as CORE can unintentionally displace or weaken another mechanism, such as transnational litigation cases, if for instance helpful findings of forced labour by CORE do not constitute admissible evidence in court. Furthermore, the Chapter argues that what is lacking across all Canada's governance and regulatory techniques to combat modern slavery is genuine incorporation of worker voice. Examples including the legal doctrine of joint and several liability, and worker-driven social responsibility are used to highlight the way in which workers are being prioritized and engaged in strategies meant to improve their labour standards. Attempts to regulate modern slavery and forced labour will never be fully successful without meaningful input from the supply chain workers who are meant to be the beneficiaries of these regulatory interventions.

Finally, in the Conclusion I answer the research questions by reference to the chapters in which they were addressed. This is followed by the implications of the findings, including what will be next for Canada in terms of governance and regulatory techniques to combat

modern slavery in GSCs. Is transparency modern slavery legislation just a first step for Canada as the Liberal government said, or will they enact MHRDD legislation as promised if they win the federal election? I then reflect on some future areas of research.

Table 1 - Key Informant Interviews

Parliamentarians				
No.	**Name**	**Title**	**Political Affiliation**	**Interview Date**
1.	Julie Miville-Dechêne	Senator	Independent Senators Group	October 14, 2021.
2.	The Honourable John McKay	Member of Parliament	Liberal Party of Canada	January 18, 2022.
3.	Iqra Khalid	Member of Parliament	Liberal Party of Canada	January 25, 2022.
4.	Arnold Viersen	Member of Parliament	Conservative Party of Canada	February 3, 2022.
Other Stakeholders				
No.	**Name**	**Title**	**Organization**	**Interview Date**
5.	Anthony Giles	Former Assistant Deputy Minister (ADM), Policy, Dispute Resolution and International Affairs	Employment and Social Development Canada (ESDC)	October 26, 2021.
6.	Michael Messenger	President and Chief Executive Officer	World Vision Canada	November 2, 2021.
7.	Martin Fischer	Head of Policy	World Vision Canada	November 3, 2021.
8.	Andrew Wallis OBE	Founder and Chief Executive Officer	Unseen UK	November 4, 2021.
9.	Sean Stephenson	Senior Associate	Dentons Canada LLP	November 12, 2021.
10.	Emily Norgang	Senior Researcher Steering Committee Member	Canadian Labour Congress (CLC) Canadian Network on Corporate Accountability (CNCA)	November 17, 2021.
11.	Simon Lewchuk	Manager, Corporate Engagement & Advocacy Former Senior Policy Advisor of Child Rights and Protection	Shareholder Association for Research and Education (SHARE) World Vision Canada	November 19, 2021.

12.	Karen Hamilton	Director Steering Committee Member	Above Ground Canadian Network on Corporate Accountability (CNCA)	December 8, 2021.
13.	Cindy Berman	Former Head of Modern Slavery Strategy	Ethical Trading Initiative	December 20, 2021.
14.	Benjamin Smith	Senior Child Labour Specialist	International Labour Organization (ILO)	January 10, 2022.
15.	Pierre Gratton	President and Chief Executive Officer	The Mining Association of Canada (MAC)	January 17, 2022.
16.	Ben Chalmers	Senior Vice President	The Mining Association of Canada (MAC)	January 17, 2022.
17.	Jennie Coleman	President and Owner	Equifruit	January 21, 2022.
18.	Catherine Coumans	Research Coordinator and Asia-Pacific Program Coordinator Steering Committee Member	MiningWatch Canada Canadian Network on Corporate Accountability (CNCA)	January 24, 2022.
19.	Matthew Coghlan	Financial Sector Engagement Manager	Walk Free	February 1, 2022.
20.	Rakesh Patry	Director General of International and Intergovernmental Labour Affairs	Employment and Social Development Canada (ESDC)	February 4, 2022.
21.	Michael Harvey	Vice President, Policy and International	Canadian Chamber of Commerce	February 8, 2022.
22.	Anasuya Syam	Human Rights and Trade Policy Director	The Human Trafficking Legal Center (HTLC)	February 11, 2022.
23.	Caren Weisbart	Senior Program Officer	Maquila Solidarity Network (MSN)	February 25, 2022.

Chapter 1

Modern Slavery, Global Governance and Regulatory Techniques

> There's no one magic bullet, and while we're within an economic system that really is based on exploitation, a multitude of responses is required.
>
> —Caren Weisbart, Maquila Solidarity Network, *personal communication*, *2022*

Introduction

On April 24, 2013, over 1,100 people, mostly garment factory workers, were killed when the eight storey Rana Plaza complex in Dhaka, Bangladesh collapsed due to a structural fault (Donaghey & Reinecke, 2018). Rana Plaza housed the Phantom Apparel and New Wave Style factories which manufactured clothing for brands in the Global North, such as Primark, Benetton and Canadian retailer Joe Fresh. This tragedy occurred despite the factories being audited and certified against the Business Social Compliance Initiative (BSCI) standard (Donaghey & Reinecke, 2018). This incident prompted global outrage and triggered a shift from voluntary, reflexive soft law mechanisms (such as codes of conduct which rely on social audits) to harder, reflexive mandatory disclosure laws to combat modern slavery and improve labour standards in global supply chains (GSCs). Home states, located primarily in the Global North where multinational corporations (MNCs) are headquartered, began to enact two types of laws aimed at increasing corporate accountability for modern slavery practices, such as forced and child labour, in supply chains. The first is transparency legislation, which mandates companies to report the steps they have taken to ensure their supply chains are free from modern slavery. The second is mandatory human rights due diligence (MHRDD) legislation, which mandates companies to conduct due diligence processes aimed at identifying and mitigating human rights abuses in their supply chains.

On May 3, 2023 Canada passed the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, a transparency law. Transparency legislation is considered the weaker model as it does not require companies to conduct due diligence. This thesis aims to explore Canada's regulatory response to modern slavery in GSCs, including the factors which influenced Canada to enact transparency legislation as opposed to MHRDD legislation. In addition to transparency legislation, the thesis also explores the increasing utilization of other hard law mechanisms in Canada post Rana Plaza, such as transnational litigation and import bans, and their effectiveness in strengthening Canada's regulatory strategy to combat modern slavery and forced labour.

The theoretical framework of this thesis extends across Chapters One and Two. This chapter discusses the rapid increase in GSCs beginning in the 1970s, the governance gap created as a result of the territorial limitations of labour laws, and introduces the theoretical framework by discussing the global governance and regulatory techniques developed to fill the governance gap. Global governance and regulatory techniques fall under the heading of New Governance Theory, which describes initiatives such as private-public partnerships, multi-stakeholder processes, and the formation of global networks or assemblages between state and non-state actors such as MNCs, international organizations (IOs), non-governmental organizations (NGOs) and civil society organizations (CSOs), developed to tackle transnational regulatory issues. The global anti-slavery network, comprised of governments and organizations such as the United Nations (UN), International Labour Organization (ILO), Organisation for Economic Co-operation and Development (OECD), Amnesty International and the Walk Free Foundation, is an example of such an assemblage. New governance theory also emphasizes reflexive law in which companies develop self-corrective measures in response to externalities such as anti-slavery and corporate accountability norms.

Chapter Two completes the theoretical framework by discussing how these global anti-slavery and corporate accountability norms are institutionalized or embedded in the national context, particularly in Canada. It draws on this Chapter's review of global governance and regulatory techniques to further develop the role of the global anti-slavery network which, via the process of norm diffusion, disseminates these norms which are subsequently filtered through the domestic political economies of each country and translated into either reflexive transparency or MHRDD laws. Concepts from global governance and regulation theory literature are therefore brought into conversation with the institutional embeddedness literature in Chapter Two to fully explain Canada's regulatory response to modern slavery in GSCs.

Home states have not only hardened corporate social responsibility (CSR) initiatives by enacting reflexive transparency and MHRDD laws, but also actors have utilized hard law mechanisms such as transnational litigation and import bans. This is in line with responsive regulation, that is, the escalation of regulatory responses by the state to achieve the desired conduct from regulated firms, which is also a crucial part of new governance theory. Regarding transnational litigation, *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 – a case where the use of forced labour abroad, at a mine owned by a Canadian company, was allowed to proceed to trial in Canada – shows the courts' willingness to recognize transnational cases. The implementation of import bans prohibits goods produced with forced labour from entering a country. As this Chapter will explain, these hard law regulatory mechanisms are not displacing existing CSR initiatives such as codes of conduct. Instead, they are being layered over the soft law initiatives, so that ideally all governance and regulatory techniques can be used in tandem with each other to strengthen the state's overall response to modern slavery in GSCs.

This Chapter provides a literature review of the global governance and regulatory techniques developed to fill the governance gap, and therefore answers research question one "what are the range of governance and regulatory techniques devised to combat modern slavery

in global supply chains?" It begins by outlining the issue of the governance gap caused by the proliferation of GSCs and the limited reach of labour laws beyond national borders. A review of global governance and regulatory theory, and in particular new governance theory, including responsive regulation, reflexive law, network governance and the interaction of regulatory techniques via the processes of layering and displacement, will then be conducted. Finally, the various governance and regulatory techniques, including CSR initiatives, mandatory reflexive disclosure laws, transnational litigation and import bans will be discussed, showing how the mechanisms have hardened over time and are being layered over each other. I will conclude by identifying important themes which emerged in the Chapter, and which will be important throughout the thesis, such as the effect of layering regulatory techniques and the importance of the global anti-slavery network in transmitting anti-slavery and corporate accountability norms.

Globalization and the Governance Gap: The Problem of Global Supply Chains

Economic globalization can be defined as the process of economic integration where national markets increasingly become part of regional and international markets and in which MNCs are the dominant players (Drahos, 2017, p. 249). The deregulation of markets and removal of barriers to trade associated with neoliberal ideology driven by Western governments and institutions such as the World Bank and International Monetary Fund began in the 1970s (LeBaron et al., 2018, pp. 15-16). Neoliberalism can be summarised as "liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade" (Harvey, 2005, p. 2). Free trade agreements (FTAs), facilitated by the World Trade Organization, increased cross-border production linkages between countries by reducing tariffs and duties which was crucial to trade liberalization (Zijm et al., 2019). In a neoliberal society, the state is regarded as lacking the

expertise to “second guess market signals”, and therefore is confined to limited inventions in the market (Harvey, 2005, p. 2). By the 1980’s the Reagan and Thatcher administrations in the USA and UK respectively adopted this line of thinking, believing that the key to growing their economies was to reduce regulations on corporations to preserve a free market environment (Gereffi, 2014, p. 11; Latapí Agudelo et al., 2019, p. 6). This spurred MNCs to freely pursue transnational outsourcing and offshoring as a cost reduction business strategy (Peck, 2017). MNCs, primarily located in the Global North, offshored or subcontracted non-core jobs in manufacturing to developing host states, mainly located in the Global South, such as China and Bangladesh, in order to take advantage of labour arbitrage or comparison shopping among locations with the cheapest labour (LeBaron et al., 2018, p. 42).

As a consequence of companies seeking low cost suppliers offshore, GSCs, which are “the complex and dynamic economic networks made up of inter-firm and intra-firm relationships which characterise the global economy” have become ubiquitous (Gereffi, 2014, p. 10). The World Bank noted that GSC linkages have expanded the fastest in East Asia, Europe and North America (World Bank, 2020). In these countries, although GSCs tend to be concentrated among an estimated 15 percent of large firms which both import and export, these firms together “account for 80 percent of total trade flows” (World Bank, 2020, p. 15). Outsourcing and offshoring has consequently resulted in the fragmentation of the workplace where the standard employment relationship, which traditionally linked a specific workforce to a single employer has broken down or “fissured” (Weil, 2014). What were basic terms of employment, including hiring, pay, supervision, training and responsibility for workplace conditions has become the responsibility of multiple suppliers rather than that of the MNC or lead firm in the supply chain (Weil, 2014, p. 7). Additionally lead firms create competition among suppliers to provide non-core services such as manufacturing, allowing lead firms to place downward pressure on the price for these services (Weil, 2014, p. 15).

This downward pressure in turn affects the wages and working conditions that suppliers can provide for their workforce, particularly in a low-skilled industry where the labour supply is elastic and low labour costs are a significant part of the contract (Weil, 2014, p. 15). This pressure has led to a rise in informal and precarious work characterised by lack of formal employment contracts, low, fluctuating wages, uncertain work hours, child labour, lack of protection in the event of dismissal or redundancy, no formal representation or access to institutions of collective bargaining and no access to social security benefits (Marshall, 2019; Bair & Palpacuer, 2015, p. 12; Zenker, 2018, p. 8). Furthermore, due to labour law being based on an employer-employee relationship (contract of employment), lead firms are often able to avoid liability for labour violations occurring in the supply chain among the overseas workforce since they do not have a contractual relationship with the suppliers' employees (Brudney, 2016; Marshall, 2019).

Regulating outsourcing and offshoring is therefore needed because of the lack of accountability of MNCs for their complicity in labour abuses in GSCs. However, labour laws lack authority beyond national borders (Brudney, 2016). Consequently, the home states of MNCs have been hesitant to regulate suppliers who do not fall under their national jurisdiction since the default jurisdiction national laws is territorial. Host states, in which suppliers and workers are located, do not have jurisdiction over lead firms which are incorporated in their home states (Sarfaty, 2015; LeBaron & Rühmkorf, 2017). Furthermore, host states often have weak legal institutions specifically to attract MNCs and are therefore unwilling to enforce their own labour laws for fear that brands will take their business to a more lightly regulated country (Locke et al., 2009; Zenker, 2018, p. 13). In a "race to the bottom" host states compete with each other to attract corporations by disregarding environmental and safety regulations, removing taxes on foreign investment and designating export- processing zones (EPZs) where labour regulation is even weaker than the rest of the country (Arengo, 2019, p. 9). Governments

of host countries are often actively antagonistic towards unions because they fear that better working conditions and higher wages would "negatively impact their comparative advantage in low production costs" (Anner et al., 2013, p. 41).

MNCs therefore operate in counties which have neither the will nor capacity to protect the rights of workers within their jurisdiction (Zenker, 2018, p. 13; Nolan, 2018). Consequently the transnational activities of these corporations are challenging to monitor and regulate and labour abuses often go unchecked and without redress. Thus as the regulatory capacities of home state governments has been outpaced by the rapid spread of GSCs and in the absence of a binding international labour framework, there is a clear governance gap where labour standards in GSCs are concerned (Bair & Palpacuer, 2015, p. 2; LeBaron & Rühmkorf, 2017; Nolan, 2018). This governance gap provides a "permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation" and as noted by Ruggie, narrowing or bridging this gap is "our fundamental challenge" (United Nations, 2008). The following section will explore regulation theory and the proliferation of global governance initiatives in response to the limitations of the state.

Global Governance and Regulation Theory

The concept of governance implies regulation, which can be defined in terms of substantive and procedural rules such as primary legislation which "reflect the state's power to command and control" (Freiberg, 2010, p. 3). Governance, however, is broader than rules as it covers procedures which empower a variety of actors or institutions to set rules (Mückenberger, 2008, p. 231; Marshall, 2019, p. 22). Under the old governance model the focus was on hierarchical, vertically integrated state-centric structures (Abrahamsen & Williams, 2009, p. 3). However as explained above, states are ill-equipped to singularly provide an adequate regulatory response to transnational labour abuses (Scott, 2008; United Nations, 2008; Bair &

Palpacuer, 2015; LeBaron & Rühmkorf, 2017). Since, with the exception of the European Union, there is not a transnational regulator, global governance defined as "govern*ance* in the absence of govern*ment*" has rapidly increased (Ruggie, 2014, p. 5; Rhodes, 1996, pp. 657-658).

New governance theory literature explains this shift from government to governance as it recognises that the state lacks the regulatory capacity to handle the challenges of globalization on its own and must therefore engage non-state actors such as MNCs, IO's, NGOs and CSOs to assist with the heavy lifting (Ruggie, 2014). New governance literature emphasizes responsive regulation, reflexive law, public-private partnerships and multi-stakeholder processes (network governance) when regulating the conduct of MNCs (Ruggie, 2014, p. 9). The layering of these governance and regulatory techniques is also relevant. The following sub-sections will outline the theoretical foundations of the global governance and regulatory techniques developed in response to the failure of state based, command and control regulation.

Responsive Regulation

In 1992, Ian Ayres and John Braithwaite described responsive regulation as "regulation [which] should respond to industry conduct, to how effectively industry is making private regulation work" (Ayres & Braithwaite, 1992, p. 4). This means that the behaviour of the target industry or firms should determine how regulatory strategy is channelled in terms of greater or lesser degrees of government intervention. The reasoning behind escalating government intervention is reinforcing neoliberal ideology of "less intrusive and delegated forms of market regulation" as far as possible (Ayres & Braithwaite, 1992, p. 5). This notion of responsiveness, therefore, allows for innovation not only regarding what prompts regulatory intervention but also what the response should be. As stated by Marshall, responsive regulation should be responsive to the conduct of those it is seeking to regulate (Marshall, 2019, p. 23). To be really

responsive, it should therefore know its regulatees, the institutional environment in which they operate and be attuned to shifts and challenges to respond accordingly (Marshall, 2019, p. 24). It should also be aware of the power and motivations of the target actors who may resist or comply with regulatory intervention and the intervention itself should be of a flexible nature allowing for modification (Marshall, 2019, p. 24). Responsive regulation therefore involves detecting non-compliant behaviour; developing tools for responding to said behaviour; enforcing these tools; evaluating their success or failure; and modifying them if necessary (Marshall, 2019, p. 24).

Ayes and Braithwaite proposed, in their well-known enforcement pyramid, that regulators should begin with compliance strategies such as persuasion and education but escalate to more punitive responses including criminal penalties and revocation of license if the subjects of regulation fail to behave as desired (Ayres & Braithwaite, 1992, pp. 35-36). In their pyramid of regulatory enforcement strategies (see ***Figure 1***), they commence with self-regulation, then ratchet up to enforced self-regulation, followed by command regulation with discretionary punishment and finally command regulation with nondiscretionary punishment (Ayres & Braithwaite, 1992, p. 39). This regulatory strategy is apparent in the field of modern slavery with the shift from entirely voluntary corporate self-regulation to mandated reporting via modern slavery legislation and even more of an escalation to hard law, command and control regulation in the form of import bans.

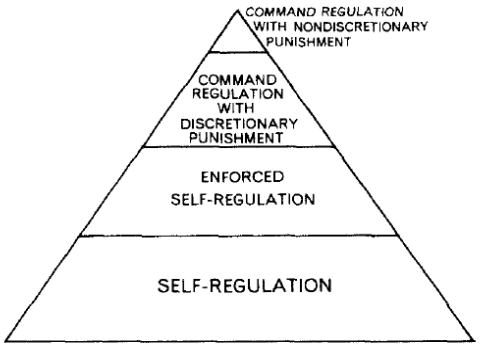


Figure 1 - Example of a Pyramid of Enforcement

The responsive regulation model is therefore a "tit-for-tat" strategy (Ayres & Braithwaite, 1992, p. 40; Baldwin & Black, 2008, p. 60). However, escalation is rarely desired by the industry or firms being regulated or the regulator. Since the 1970s, self-regulation by private actors has been the preferred strategy of the state regarding MNCs, as it is least burdensome not only to the corporations but also for the taxpayers (Ayres & Braithwaite, 1992, p. 38). The ideal situation consists of the state negotiating substantive regulatory goals with industry and leaving responsibility of how to achieve those goals to the discretion of the regulated businesses. This is the optimal strategy for "maximum goal attainment at least cost to productive efficiency" (Ayres & Braithwaite, 1992, p. 38). However, given industry's tendency to exploit self-regulation by only sub-optimally complying with regulatory tools, such as CSR and codes of conduct, the state must communicate its preparedness to escalate its regulatory strategy up the pyramid. Such escalation is exemplified by the shift towards mandatory disclosure via modern slavery legislation and the increasing popularity of import bans by the state. Responsive regulation is therefore a key component of new governance theory when achieving transnational regulatory goals. The next section will discuss the related yet distinct strategy of reflexive law which is just as vital in attempts to fill the governance gap.

Reflexive Law

Reflexive law theory was originally developed by Gunther Teubner in 1983 when he introduced the concept of reflexive legal rationality (Teubner, 1983, p. 254). He argued that "in addition to formal and substantive legal rationality, a complex modern legal system is characterised by reflexive rationality focusing on proceduralisation and the fundamental importance of self-regulation" (Rogowski, 2013, p. 31; Teubner, 1983, pp. 254-7). This concept suggests that particular attention should be paid to the limits of legal regulation and to the self-regulation processes in other social systems (Rogowski, 2013, p. 32). This focus on

self-regulation is why reflexive law has been used interchangeably with responsive law at the macro level to indicate a "socially responsive, contextualised and ultimately learning mode of legal intervention" (Zumbansen, 2008, p. 776; Wen, 2016, p. 342).

However, a vital component of responsive law is that it depends on the creation of "public-interest-oriented values and substantive principles of law through political deliberation" while leaving it to the regulated industry or firms to craft detailed solutions for achieving regulatory goals, subject to state scrutiny and intervention (Wen, 2016, p. 343). Nonet and Selznick noted that "responsive law is no maker of miracles in the realm of justice. Its achievements depend on the will and resources of the political community" (Nonet & Selznick, 2001, p. 113). In contrast, reflexive law focuses on *steering* self-regulation by regulatees while retreating from assuming full responsibility for the substantive outcomes (Wen, 2016, p. 343). It steers self-regulation by setting loose regulatory parameters within which the regulated subjects have considerable autonomy to engage in self-regulation (Wen, 2016, p. 343). The main way of achieving this is through proceduralization which includes "duties of disclosure, audit, justification, consultation, and organisation of internal control processes" (Teubner, 1985, p. 167).

Reflexive law or "regulated autonomy" therefore seeks to apply limited coercion to the target of regulation in such a way as "to develop self-corrective structures sensitive to various externalities via norms of organisation and procedures, while acknowledging bounded political and economic powers, cultural values, social norms and ways of being" (Wen, 2016, p. 342). Instead of creating substantive obligations, it offers a form of less direct legal intervention by encouraging "internal critical reflection" and regulating the self-regulatory process (Wen, 2016, p. 342). It builds on the idea that regulation is more effective, relevant and more readily complied with if created by the industry or firms directly affected by it (Buhmann, 2020, p. 514). It aims to ensure "representation of a plurality of views and to stimulate system-internal

reflection and responsiveness to societal needs through procedural forums providing for participation" (Buhmann, 2020, p. 514). It is a theory for facilitating the process of negotiation and ensuring that this process allows for exchanges regarding needs and expectations so that participants have the opportunity to respond to these external concerns by internalizing them and adjusting their own conduct to suit (a form of self-regulation) (Buhmann, 2020, p. 514). Participatory forums for learning and exchanges can be physical, exemplified by the multi-stakeholder meetings held during the development of the UN Global Compact (UNGC) 2000 where business, CSOs and other public organizations exchanged views and agreed that there was a need for a normative foundation upon which to build their social responsibility policies to better achieve UN goals (Buhmann, 2020).

Disclosure or transparency-based modern slavery legislation constitutes a form of reflexive law as it is state mandated disclosure with the goal of encouraging "internal decision-making and behaviour changes in commercial organisations" (Wen, 2016, p. 344). Reflexive law theory is therefore integral to understanding anti-slavery and corporate responsibility norm creation and transmission by non-state actors such as IOs and CSOs. Networks or assemblages of these non-state regulators, which are key elements of new governance theory, have been constructed to address transnational problems like forced labour in global supply chains.

Network Governance: Assemblage and Governmentality Theory

Network governance, characterized by "diverse, horizontally linked complexes of actors", is a prominent feature of new governance theory (Rhodes, 1996; Abrahamsen & Williams, 2009, p. 4). There have been various approaches to theorizing network formation over the years including assemblage and governmentality theory. Assemblages as a concept originated with Gilles Deleuze and Félix Guattari (Deleuze & Guattari, 1987). Deleuze defined an assemblage as:

…a multiplicity which is made up of many heterogeneous terms and which establishes liaisons, relations between them across ages, sexes and reigns – different natures. Thus, the assemblage's only unity is that of co-functioning: it is a symbiosis, a 'sympathy'. It is never filiations which are important but alliances, alloys; these are not successions, lines of descent, but contagions, epidemics, the wind. (Deleuze & Parnet, 1987, p. 69)

An assemblage is therefore a "mode of ordering heterogeneous entities so that they work together for a certain time" (Müller, 2015, p. 28). According to Deleuze and Guattari there are no pre-determined hierarchies and no singular organising principle which explains assemblages but they do have some essential features (Müller, 2015).

Assemblages are heterogeneous which means that anything can be related including people, things, ideas and objects, and no dominant entity is assumed (Müller, 2015). They are also relational in that they are diverse entities which are linked together to constitute a new whole (DeLanda, 2006). DeLanda contends that assemblages consist of relations of exteriority, that is, the components of the assemblage maintain a degree of autonomy from the relations binding them and their properties can never be reduced to these relations (DeLanda, 2006). Assemblages also have a dynamic of deterritorialisation and reterritorialisation where "reterritorialized sides,…stabilize it, and cutting edges of deterritorialization,… carry it away' (Deleuze and Guattari 1987, p. 88). This means that they establish territories as they emerge and they hold together and stabilize but they also constantly transform, mutate and break up (Deleuze and Guattari, 1987). Assemblages are also productive, producing new territorial organizations, behaviours, expressions, actors and realties (Müller, 2015). This conception of assemblages provide a tool "to describe transformative, creative or deterritorializing forces and

movements" and has been utilized for analyzing the interrelation between politics, power and space (Müller, 2015, p. 29).

Governmentality theory has also been utilized to conceptualise power and politics. In an attempt to conceptualise modern forms of political power, Foucault used the term governmentality to describe a particular way of thinking and acting which embodied attempts to know and govern the health, wealth and happiness of populations (Foucault, 1979; Greenhalgh, 2007; Rose & Miller, 1992). It takes into account that governing includes certain knowledges, representations and expertise regarding the subject to be governed (Larner & Walters, 2004). Whereas traditional notions of power deemed governance to be the purview of the state, in contrast Foucault used the term governmentality to describe the "proliferation of a whole range of apparatuses pertaining to government and a complex body of knowledges and 'know-how' about government, the means of its exercise and the nature of those over whom it was to be exercised" (Rose & Miller, 1992, p. 174; Rose et al., 2006). Foucault therefore conceptualized government by the state as only one form of governance among many. Instead of endorsing any single body as responsible for managing citizens, this approach recognises that a variety of authorities can govern in different sites to achieve different objectives (Rose et al., 2006).

Following in Foucault's footsteps, global governmentality researchers have used the term governmentality to denote "the dispersion of governmental functions amongst a network of international and non-state institutions" after the neoliberal reconfiguration of the state beginning in the 1970s (Barry, 2004, p. 202). IOs, MNCs, consultants, auditors and NGOs together perform the job of "government at a distance" (Barry, 2004, p. 202; Rose & Miller, 1992). States may be involved in, and make use of, various global networks to achieve regulatory goals or conversely such networks may operate independently of the state (Slaughter, 2004; Bernstein & Cashore, 2007; Black, 2008). Foucault described

governmentality as an "ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics that allow the exercise of this very specific albeit complex form of power…" (Foucault, 1979, p. 20; Rose et al., 2006, p. 86).

Governing at a distance, in line with neoliberal ideology, utilizes tactics such as auditing, categorizations and benchmarking aimed at obtaining quantitative measures of performance (Larner & Le Heron, 2004). Benchmarking for instance is widely used by IOs and NGOs because it universalizes desired norms by translating them into numerical representations which creates the impression of authoritative expertise on topics such as human rights (Broome & Quirk, 2015). Examples include KnowTheChain ranking companies and Walk Free ranking countries according to their efforts to address risks of modern slavery in their GSCs. Global governance benchmarking is also prevalent as it is a tool that can compare "spatially and organisationally discrete systems, activities and individuals" (Larner & Le Heron, 2004, p. 218).

Network governance is exemplified by the formation of a global anti-slavery network or assemblage composed of states, business associations, academic institutions, and international organizations such as the UN, ILO, OECD, Anti-slavery International, Amnesty International, the Freedom Fund and Walk Free (LeBaron & Rühmkorf, 2019).This network was formalised into Alliance 8.7 in 2016 with the aim of greater co-operation to achieve Sustainable Development Goal (SDG) Target 8.7 of eradicating forced labour, modern slavery, human trafficking and child labour. Through soft law initiatives such as the UNGC 2000, the UN Guiding Principles on Business and Human Rights (UNGPs) 2011, and OECD revised Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines) 2011, these organizations aim to transmit corporate accountability and anti-slavery norms with the objective of encouraging MNCs to conform to these norms by making them explicit in their policies and integrating them across all functions bolstered by monitoring and

auditing (LeBaron & Rühmkorf, 2019; Barry, 2004). This is achieved by means of self-regulated autonomy, that is, reflexive law and responsive regulation, whereby the targets of governance are given the freedom to act in specific ways, that is, ways which achieve governance goals (Rose & Miller, 1992; Rose et al., 2006). The global anti-slavery network is further discussed in Chapter Two. Achieving governance and regulatory goals, therefore, requires a variety of mechanisms or techniques that are layered over each other.

Regulatory Interactions

The process of institutional change according to Mahoney and Thelen (2009) can be a gradual evolution with subtle shifts across time. Most definitions of institutions treat them as enduring, persistent features of social and political life, that is, norms, rules and procedures, which structure behaviour and cannot be instantly or easily modified (Mahoney & Thelen, 2009). Powell for instance notes that, "things that are institutionalized tend to be relatively inert, that is, they resist efforts at change (Powell, 1991, p. 197). Similarly Jepperson notes that institutions are "social patterns that, when chronically reproduced, owe their survival to relatively self-activating processes" (Jepperson, 1991, p. 145). The process of change can therefore be a "dynamic process in which agents of social change struggle for reform within shifting political and economic conditions" (Marshall, 2019, p. 36). Mahoney and Thelen (2009) describe various modes of institutional change, including displacement, layering, drift and conversion. Displacement occurs when the existing rules are replaced by new rules. This could be an abrupt, radical shift for instance in the event of a revolution or regime change where there is a rapid breakdown of institutions (Marshall, 2019, p. 51). However, displacement can also be a gradual process which occurs when new institutions are introduced to compete with older ones instead of supplanting them directly (Mahoney & Thelen, 2009).

Layering describes the process whereby new rules are attached to the existing rules, altering the way the original rules structure behaviour (Schickler, 2001; Thelen, 2003). It involves additions, revisions or amendments to existing rules, which can cause significant change if the amendments change the logic of the institution or endanger stable reproduction of the original rules (Marshall, 2019, p. 74). Layering is most likely to occur when those challenging the original rules lack the capacity to actually change them. Instead they work within the system to "add new rules on top of or alongside old ones" (Mahoney & Thelen, 2009, p. 17). Those who defend the status quo may successfully preserve the original rules but are unable to stop the introduction of modifications or amendments. While the changes may be small, they can accumulate leading to bigger changer overtime. A subsequent chapters will explore, the gradual shift away from voluntary, corporate self-regulation in Canada is being achieved by layering hard law mechanisms over the soft law initiatives which have been institutionalized for decades.

In the case of drift and conversion there is no addition of new rules. Drift occurs when the rules remain the same in the formal sense, but their impact is altered by the inaction of actors who choose not to respond to environmental changes or shifts in external conditions (Mahoney & Thelen, 2009). For instance, politicians who resist efforts to review electoral districts in response to population movements can cause change through drift, as their passivity has the effect of altering election outcomes (Mahoney & Thelen, 2009, p. 17).

In the case of conversion the rules also remain formally the same but can be interpreted new ways when actors exploit their inherent ambiguities (Mahoney & Thelen, 2009, pp. 17-18). Due to the lack of new rules being introduced with drift and conversion, these modes of institutional change are less relevant to this thesis than displacement and layering.

In addition to these modes, Mahoney and Thelen (2009) discuss how important the political context and character of the institution is to the mode of change. They ask two

questions in this regard, "Does the political context afford defenders of the status quo strong or weak veto possibilities? Does the targeted institution afford actors opportunities for exercising discretion in interpretation or enforcement?" (Mahoney & Thelen, 2009, p. 18). They note that layering is the most promising mode in a political environment where there are strong veto actors defending the existing institution. This is because, although powerful veto actors can protect old institutions, they cannot necessarily avoid the addition of new elements.

Mahoney and Thelen (2009, p. 29) also underscore the importance of coalition dynamics as social agents of change rarely work alone. Effecting the desired change usually depends on the coalitions that agents are able to deliberately forge. They use the term "insurrectionaries" to describe those at odds with status quo defenders and who "must seek alliances with other institutional challengers who have their own reasons (possibly substantively quite different) for opposing existing arrangements" (Mahoney & Thelen, 2009, p. 20). As subsequent chapters will discuss, political context is a key component in this thesis as is the formation of alliances or coalitions between parliamentarians and CSOs in advocating for the enactment of modern slavery legislation in Canada.

Layering is the mode of institutional change most relevant to this thesis. It explains the shift from voluntary, soft law initiatives such as CSR and multi-stakeholder initiatives (MSIs) to mandated disclosure and hard law such as import bans. The way in which home states are hardening and layering these governance and regulatory techniques, rather than displacing any of them, is explored in the next section.

Filling the Governance Gap: Governance and Regulatory Techniques and Actors

The failure of soft law such as codes of conduct to eradicate modern slavery in supply chains led to the hardening of CSR initiatives in home states via transparency and MHRDD legislation. Additionally hard law mechanisms in the form of transnational litigation and import

bans are being utilized in home states. However, none of the existing soft law regulatory techniques have been displaced by the introduction of these hard law mechanisms. Instead these new, harder mechanisms are layered over existing voluntary ones with the goal of utilizing a range of tools to combat modern slavery. This section sets out a typology and timeline of the governance and regulatory mechanisms developed to fill the governance gap and the actors who are the driving forces behind these mechanisms.

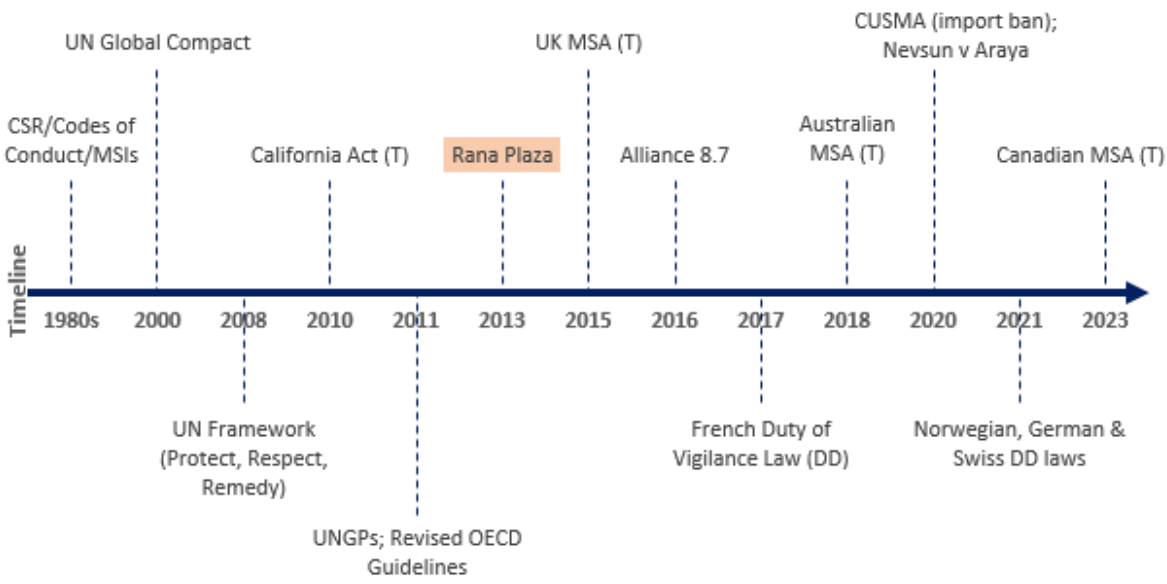
CSR: Codes of Conduct and MSIs

Initial attempts to fill the governance gap consisted of reflexive, soft law in the form of private business self-regulation or CSR. As illustrated in ***Figure 2***, corporate codes of conduct along with social auditing became the standard response of corporations after ongoing anti-sweatshop activism in the late 1980s to early 1990s demanding that MNCs take responsibility for the labour abuses occurring in the supplier factories from which they purchased their products (Bair & Palpacuer, 2015, p. 12; Zenker 2018, p. 9). MNCs engaged in a form of self-regulation, imposing codes of conduct on suppliers requiring them to comply with workplace standards to protect the rights of workers (Pickles & Zhu, 2013, p. 4; Sarfaty, 2015, p. 421). Companies initially developed their own codes of conduct but these were viewed as purely promotional efforts to pacify consumers and protect themselves from reputational damage (Gordon, 2017, p. 2).

Codes developed by MSIs were regarded as more legitimate than unilateral codes imposed by MNCs as MSIs involve a number of stakeholders to participate in their design and enforcement (Gordon, 2017). Consequently MSIs such as Ethical Trading Initiative (ETI) in the UK, the Fair Labor Association (FLA) in the United States (USA) and the Fair Wear Foundation (FWF) in the Netherlands were founded in the late 1990s. Many of these MSIs, such as the FWF, also provided auditing services essential to brand reputation and

legitimization (LeBaron et al., 2017). MNCs either established in-house audit departments, contracted with third parties to monitor supplier compliance in factories, or joined various consortiums which publish labour codes of conduct (Zenker, 2018, p. 11). They also drew upon public international law authored by the UN and ILO for their substantive normative content.

Figure 2 - Timeline of Governance and Regulatory Techniques



CSR- Corporate Social Responsibility
CUSMA- Canada-United States-Mexico Agreement
DD- Due Diligence
MSA- Modern Slavery Act
MSIs- Multi-stakeholder Initiatives
OECD- Organisation for Economic Co-operation & Development
T- Transparency
UK- United Kingdom
UN- United Nations
UNGPs- United Nations Guiding Principles on Business & Human Rights

The actors involved in these governance technique therefore include corporations, transnational activist groups, MSIs and auditors. In order for reflexive law to be effective, MNCs are supposed to internalize the anti-slavery norms they were pressured into acknowledging by activists. The idea is that companies should respond to their internal reflection or internal decision-making with behavioural changes in the organization regarding labour exploitation in their supply chains (Buhmann, 2020).

CSR, however, and voluntary soft law in general, has proven to be largely unsuccessful in improving working conditions in GSC. Its voluntary nature allows MNCs to "backslide on their CSR commitments, half-heartedly enforce rules, and choose sites of production where the rules are quite difficult to enforce" as they prioritize profits over pushing labour standards through the chain (Bartley, 2018, p. 260). MNCs also fund and therefore heavily influence MSIs (Mezzadri, 2017). Furthermore, in-house and third party auditors, who are under contract with MNCs who pay their fees, often fail to detect, report or resolve labour abuses due to suppliers concealing the evidence and the auditors' interest getting future work from firms (LeBaron et al., 2017; Bartley, 2018, p. 260; Zenker, 2018, p. 4). The failure of CSR led to IOs such as the UN and OECD to assist corporations in more effectively combating modern slavery in their supply chains.

International Organizations: Frameworks and Guidelines for MNCs

In parallel to codes and conduct, IOs such as the UN and OECD, both integral members of the global anti-slavery network, sought to promote socially responsible business practices norms among companies operating transnationally. They did so by relying again on reflexive, soft law techniques. In an effort to increase corporate responsibility for the labour violations occurring in transnational supply chains, the UN Global Compact (UNGC) 2000, the UN Guiding Principles on Business and Human Rights (UNGPs) 2011, and the OECD revised Guidelines for Multinational Enterprises (OECD Guidelines) 2011 were developed, as shown in ***Figure 2***.

Launched in 2000 the UNGC is a voluntary initiative comprised of over 22,000 members (government groups, businesses, civil society and labour organizations) and relies the commitments of chief executive officers (CEOs) to implement sustainability principles and support UN goals. It seeks to align business strategies and operations with its ten principles

covering human rights, labour (including the elimination of forced and child labour), environment and anti-corruption. Companies are required to produce an annual report stating the work they have done to embed the principles into their policies and operations. John Ruggie, Special Representative of the UN Secretary-General, developed the 'Protect, Respect and Remedy Framework' for business and human rights in 2008 (United Nations, 2008). The framework's three principles revolve around the state's duty to protect against human rights abuses, the duty of businesses to respect human rights and need for access to remedy.

John Ruggie drafted the UNGPs in 2011 to operationalize the Protect, Respect and Remedy framework (United Nations, 2011; Ruggie, 2014, p. 7). The UNGPs provide guidance which Ruggie defined as "a comprehensive, proactive attempt to uncover human rights risks, actual and potential, over the entire life cycle of a project or business activity, with the aim of avoiding and mitigating those risks" (United Nations, 2009, p. 18). Guiding Principle (GP) 17 of the UNGPs outlines the process of human rights due diligence (HRDD) that business enterprises should undertake, that is, to "identify, prevent, mitigate and account for how they address their impacts on human rights" (United Nations, 2011, p. 17). However, the UNGPs are still voluntary in nature and have not been as effective as initially envisioned.

The UNGPs received broad support from business, as well as other stakeholders such as trade unions and labour rights activists, because John Ruggie purposely made the guidelines ambiguous to appease all stakeholders (Landau, 2023). He achieved this by framing HRDD, as a form of risk management familiar to business, but with strategic ambiguities added (Ruggie et al., 2021; Landau, 2023). For instance, regarding the scope of HRDD process, GP 17 states that it should cover "adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships" (United Nations, 2011, p. 17). While this language appeals to human rights and worker activists, the GP qualifies this by stating that the

process “will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations”, thereby preserving scope for managerial discretion (United Nations, 2011, p. 18; Landau, 2023). This is further illustrated in the commentary of GP 17 which states that businesses with a large number of entities in their supply chains may find it unreasonably difficult to conduct HRDD across all of them and should instead “identify general areas where the risk of adverse human rights impacts is most significant” (United Nations, 2011, p. 18).

The ambiguity of the UNGPs enabled the coexistence of two significantly divergent interpretations within transnational labour governance as to what HRDD required of businesses and states. Human rights and labour activists interpreted it “through a logic emphasising rights, the empowerment of workers and trade unions, principles of transparency, participation, and accountability” and as a corrective to the deficiencies of private governance techniques being used to fill the governance gap (Landau, 2023, p. 5). Conversely, business actors interpreted HRDD “through a logic emphasizing managerial discretion, corporate risk management, and internal control over corporate systems and processes” (Landau, 2023, p. 5). This logic therefore interprets HRDD as a managerial innovation and practical tool which businesses can use to better organize and manage their internal and external risks. Landau (2023) notes that Ruggie is consistently vague regarding whether HRDD should be considered a business tool or legal obligation. He frequently refers to HRDD as a tool that can be integrated into company risk management systems, and carefully emphasizes that the consequences of failure to conduct HRDD are mostly reputational rather than legal (Landau, 2023). However, for the benefit of labour activists he did not exclude the possibility of HRDD being further embedded into international and national frameworks as a legal standard of conduct against which the actions of companies could be assessed and fault assigned (Landau, 2023).

Despite the ambiguities of the UNGPs, a global anti-slavery network of international organizations, states, business and civil society promote anti-slavery and corporate accountability norms via the HRDD framework outlined in the guidelines. In addition to stemming from vague international guidelines where the meaning of HRDD is contested, as Chapter Two will discuss, these norms are contested at the national level as they are filtered through the domestic political economies of each country. This has resulted in primarily Anglo countries, including Canada, enacting transparency legislation in line with managerial interpretations of HRDD, and European countries enacting more rights-based MHRDD legislation which is considered the superior model, as subsequent sections will discuss.

The OECD Guidelines were adopted in 1976 but revised in 2011 to incorporate the UNGPs guidance on HRDD. They also provide guidance for MNCs regarding human rights, employment and environmental issues. States adopting the guidelines are required to implement complaint mechanisms or National Contact Points (NCPs) which are meant to "further the effectiveness of the *Guidelines* by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the *Guidelines*" (OECD, 2011, p. 68). NCPs, however, did not have the impact expected in terms of providing access to justice for victims of corporate misconduct via a non-judicial mechanism. OECD Watch reported in 2015 that after 15 years of the establishment of NCPs, remedy for victims remained rare (OECD Watch, 2015).

These frameworks and guidelines have been adopted globally. There was swift uptake on the UNGPs by national and international standard-setting bodies as well as companies and NGOs who used them as a policy template and advocacy tool respectively (Ruggie, 2014). As a result of these soft law reflexive mechanisms, companies were meant to develop self-corrective techniques, via due diligence processes for instance, to stem labour abuses in their supply chains. However, the collapse of Rana Plaza in Bangladesh only weeks after its factories

were audited further showed the failure of voluntary, soft law governance, and highlighted the need for stronger regulatory mechanisms. This would come in the form hard, reflexive transparency and MHRDD laws, as well as hard law in the form of transnational litigation and import bans.

Disclosure and Supply Chain Transparency Legislation

Home states, typically in the Global North where the majority of MNCs are located, began to enact laws requiring MNCs to disclose the efforts they had taken to address labour abuses in their supply chains. The first legislation specifically targeting modern slavery in supply chains was the California Transparency in Supply Chains Act (California Transparency Act), 2010. The collapse of the Rana Plaza factory in Bangladesh in 2013 precipitated a rash of such transparency or disclosure laws, as illustrated in ***Figure 2***. In line with responsive regulation, this intervention by the state illustrates a ratcheting up of regulatory responses as firms were not adhering to corporate accountability norms. Anglo countries began enacting transparency modern slavery laws including the UK Modern Slavery Act (MSA), 2015 and the Australian MSA, 2018 which were modelled after the California Transparency Act, 2010 (LeBaron & Rühmkorf, 2019, p. 713). Canada followed suit and enacted the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, a transparency law in 2023. These laws are considered the first generation of modern slavery legislation. What these laws do is ratchet up private standards to fill the governance gap (LeBaron & Rühmkorf, 2019, p. 713).

Disclosure legislation has been coined “CSR as mandated by the government” as it is hybrid public-private legislation with extraterritorial effect. These laws require corporations to produce an annual statement outlining the steps they have taken to ensure that modern slavery is not present in their supply chains. The desired effect is that investors and consumers will use their collective investment and purchasing power to boycott and shame businesses failing to

sufficiently disclose their efforts to ensure slavery free supply chains (Barna, 2018). These laws are therefore market driven in that they rely on "the scrutiny of public light" and the threat of reputational damage to alter corporate behaviour (Phillips et al., 2018, p. 1).

Although disclosure or transparency laws embody an escalation in state regulatory responses, they are a form of reflexive law that still rely on the same codes of conduct and auditing systems. There has been evidence to suggest that these laws are not effective in increasing corporate accountability and are more "symbolic than substantive in nature (Birkey et al., 2018, p. 827; Carrier, 2021; Sinclair & Dinshaw, 2022). This means that despite companies ticking all the right boxes, such as including clauses in supplier contracts which prohibit the use of forced labour, there has been no change in business practices. Crucially, the only sanction is for failure to report, not for failing to prevent forced or child labour in supply chains. This led to MHRDD legislation being considered superior to transparency legislation.

Mandatory Human Rights Due Diligence Legislation

MHRDD legislation, the second generation of modern slavery laws, in contrast to transparency legislation requires companies to exercise due diligence in their supply chains and not simply report. France set a precedent for the rest of Europe when it enacted MHRDD legislation in the form of its Corporate Duty of Vigilance Law in 2017. French NGOs such as Sherpa and trade unions were the driving force behind the legislation. Corporations subject to this law must, in line with the UNGPs, develop a vigilance plan to identify and address potential or actual environmental and human rights abuses in their supply chains to mitigate or prevent their negative impact (Nolan, 2018). Corporations must also work with trade unions to monitor the effectiveness of these measures.

The French law is also emblematic of a third generation of modern slavery laws, that is, MHRDD with civil liability. If a company fails to implement a vigilance plan, victims,

NGOs or trade unions can pursue civil litigation in a French court of law to secure compensation for damages (Evans, 2020). The law has been praised for challenging the doctrine of separate legal personality, which deems MNCs separate legal entities from their subsidiaries and contractors, and establishing legal liability (Ruggie, 2014; Schilling-Vacaflor, 2021). Following France's lead, the Norwegian Transparency Act, German Due Diligence in Supply Chains Act, and Swiss Conflict Minerals and Child Labor laws were passed in 2021. These laws do not provide for civil liability and are therefore categorized as second generation. The European Union Corporate Sustainability Due Diligence Directive was passed in 2024 and like the French law it provides for civil liability and is therefore third generation.

Although MHRDD legislation, like transparency legislation, is still hardened reflexive law, it does improve on the transparency model. However, there are early signs of its ineffectiveness to increase corporate accountability for labour violations abroad. Early assessments of the first set of vigilance plans by French NGOs such as Sherpa indicate overall dissatisfaction with the plans published (Sherpa, 2019). Sherpa noted that this first wave of plans were "short" and gave the example of an extractive sector parent company with over 900 subsidiaries in 130 countries publishing a plan only six pages long (Sherpa, 2019, p. 10). They also noted that "most of these Plans do not enable us to understand precisely which risks have been identified by the businesses, their location within the group and even less how companies respond to them" (Sherpa, 2019, p. 10). Responsive regulation theory noted the tendency of firms to sub-optimally comply with private, self-regulatory mechanisms, and evidently public-private hybrid regulation as well. It is essential that home states show a readiness to escalate or harden regulatory techniques, which is being done in the form of hard law mechanisms including transnational litigation and import bans.

Transnational Litigation

Transnational litigation is a regulatory technique that has long been utilized by private actors, NGOs and CSOs in an attempt to secure remedy for victims of labour exploitation. However, this is often a difficult task as GSCs are constructed around private law protections provided by legal doctrines such as privity of contract, separate legal personality and *forum non conveniens or* lack or jurisdiction (Ruggie, 2014; Mijares Peña, 2014; Sobel-Read et al., 2018; Eller, 2020; Fudge & Mundlak, 2023). Privity of contract means "a contract cannot confer rights or impose obligations arising under it on any person except the parties to it" (Ogilvie, 2015, p. 731; Beale, 2012). Supply chain relationships are formed via "sequential bilateral contracting" meaning that lead firms usually have a contract only with the first tier supplier and not with lower tier subcontractors where slave labour typically occurs (Cafaggi, 2010, p. 17; Sobel-Read et al, 2018, p. 2).This makes it difficult to hold companies liable.

The doctrine of separate legal personality states that a company's shareholders are separate from the company itself and only bear limited liability financially to the extent of the value of their shares (Ruggie, 2014, p. 13). Courts rarely "pierce the corporate veil" to hold shareholders responsible for the actions of the corporation (Thompson, 1991, p. 1036). This doctrine has been stretched to apply to MNCs, with subsidiaries and contractors globally, being considered a legally separate entity (Ruggie, 2014, p. 13; Fudge & Mundlak, 2023). Parent companies are generally not held liable for harms committed by its overseas subsidiaries, even when they are the only shareholder (Ruggie, 2014, p. 9).

Another obstacle has been the legal doctrine of *forum non conveniens* which allows a court to dismiss a claim if it determines that the host state is a more appropriate forum than the home state, for instance, due to proximity to witnesses and other evidence (Mijares Peña, 2014, p. 5). A state has control over a parent company incorporated within its jurisdiction but this control does not necessarily extend to the company's overseas subsidiaries and affiliates

(Mijares Peña, 2014, p. 5).The burden is on plaintiffs to prove that they would not get a fair trial in their country.

The difficulty of gaining justice through transnational litigation was starkly highlighted in the case of *Das v. George Weston Limited,* 2018 ONCA 1053 where the Ontario Court of Appeal in a class action law suit filed by victims of Rana Plaza against Loblaw Companies Limited (owner of the Joe Fresh brand manufactured at Rana Plaza) and Bureau Veritas (who audited the factories) maintained that there were no grounds for negligence. Regarding choice of law, the court upheld the finding that Bangladeshi law applied as the action in tort crystalized in that country when the parties were injured. Under the law the plaintiffs had therefore filed the claim outside of the one year limitation period. It also held that there was no reasonable cause of action against Loblaws (due to lack of relationship with or direct control over the manufacturers) or Bureau Veritas (whose mandate did not include auditing for structural integrity).

Despite these obstacles, NGOs and CSOs have persisted in utilizing the judicial system. There has been some success such as in the case of *Vedanta v. Lungowe [2019] UKSC 20* where the Supreme Court ruled that English parent company Vedanta was liable for environmental damage caused by its subsidiary Konkola Copper Mines plc (KCM) in Zambia. Also in a landmark ruling in *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, the Supreme Court of Canada held that the workers' lawsuit could proceed to a trial judge to determine if Nevsun breached customary international law by subjecting them to forced labour in an Eritrean mine. These successes however are rare. In another example of home states ratcheting up to hard law regulatory techniques, import bans are being utilized to tackle modern slavery in supply chains.

Import Bans

Import bans are rising in popularity among home states as a command and control or hard law regulatory mechanism that can fill the governance gap. The use of import bans originated in the United States Tariff Act, 1930, specifically section 307, which prohibits the importation of any goods made with prison or forced labour. The ban is enforced by the USA's Customs and Border Protection (CBP) agency which has the power to issue a Withhold Release Order (WRO) which prevents imports from entering the United States if there is a suspicion that the goods were made with forced labour (Syam & Roggensack, 2020). The number of shipments stopped at the border has risen significantly after 2015 with the passage of the Trade Facilitation and Trade Enforcement Act (TFTEA), 2015. TFTEA closed the 'consumptive demand' loophole which permitted slave-made goods to enter the USA if USA producers could not meet consumer demand (Syam & Roggensack, 2020, p. 26). Canada made an amendment to its Customs Tariff Act, 1997 to prohibit the importation of goods made with forced labour as a condition of the Canada-United States-Mexico Agreement (CUSMA) which came into force on July 1, 2020. Mexico has also implemented an import ban and the UK, Australia and the European Union are contemplating import bans (Carrier, 2021; Sinclair & Dinshaw, 2022, Jacob et al., 2022).

The effectiveness of import bans is debateable. This is because there is always the risk that MNCs will terminate contractual relationships with suppliers implicated in the use of forced labour (Ryngaert, 2019; Jacob et al., 2022). This ultimately affects supply chain workers who, in the worst case scenario, are left jobless. In Canada specifically, the import ban has been utilized once since its implementation in 2020, and the detained shipment was eventually allowed to enter Canada after satisfactory documentation was provided by the importer (Chase, 2022). Import bans must therefore be used cautiously to avoid putting supply chains workers in an even worse position.

This section demonstrated the hardening and layering of governance and regulatory techniques by home states to fill the governance gap. In an effort to strengthen their response to modern slavery in supply chains, home state have transitioned from voluntary, soft law reflexive techniques such as codes of conduct, to harder reflexive transparency and due diligence laws, and hard law in the form of transnational litigation and import bans. These mechanisms are ideally meant to work in tandem to improve labour standards in supply chains. Whether they actually complement each other as intended or displace each other is evaluated in subsequent chapters.

Conclusion

This Chapter answered research question one by exploring the range of global governance and regulatory techniques devised to combat modern slavery in global supply chains. Soft law, reflexive mechanisms such as CSR codes of conduct and international guidelines failed to effectively fill the governance gap. Consequently, in line with responsive regulation, home states escalated their regulatory response by enacting mandatory disclosure laws. Transparency and MHRDD legislation, although hard law, are still reflexive in nature and evidence shows that companies have not significantly altered their business practices in response to these laws. In addition to these hardened reflexive laws, home states have also utilized hard law in the form of transnational litigation and import bans to further bolster their regulatory response to modern slavery. However, success in transnational litigation is rare and import bans can be detrimental to workers if improperly designed. Despite their individual weaknesses, these soft and hard regulatory mechanisms have been layered over each other in an attempt to strengthen the state's overall regulatory response to modern slavery. The layering of soft and hard law mechanisms in Canada will be discussed in Chapters Three and Four of

the thesis, and Chapter Five will evaluate the effectiveness of such layering in improving labour standards for GSC workers.

The emergence of an epistemic global anti-slavery network driving modern slavery policy is also important. This network transmits anti-slavery and corporate accountability norms from the global to the national context via frameworks such as the UNGPs, which outlines the due diligence process and serves as a guide for drafting mandatory disclosure laws. However, as noted in this Chapter, Anglo-American states have enacted transparency modern slavery laws while the MHRDD model has been prevalent in Europe. Furthermore, the design and stringency of these laws vary in different jurisdictions regardless of the model. This shows that these norms translate differently depending on the jurisdiction. This is because these global norms are embedded into the national landscape of a country, which ultimately determines the type of law adopted. Chapter Two will discuss how various factors that comprise a country's domestic political economy affects the type of legislation it enacts. This is important because, as Chapters Three and Four will explain, Canada's unique domestic political economy played a major role in the passage of its transparency modern slavery law.

Chapter 2

Anti-slavery and Corporate Accountability Norm Diffusion from the Global to Domestic Context

> The diffusion of evolving transnational anti-slavery and corporate accountability norms is not automatic but rather is contested and shaped at domestic scales and can be trumped by the power of economic interests. (LeBaron & Rühmkorf, 2019, p. 712)

Introduction

As discussed in Chapter One there is a global anti-slavery network or assemblage, comprised of international organizations (IOs), civil society organizations (CSOs), non-governmental organizations (NGOs), states, business associations and academic institutions responsible for transmitting anti-slavery and corporate accountability norms (LeBaron & Rühmkorf, 2019). This Chapter completes the theoretical framework of the thesis by discussing the process of norm diffusion occurring via this epistemic network from the global to domestic context through policy sharing regarding best regulatory practice for combatting modern slavery in GSCs. These norms are transmitted through guidelines such as the United Nations Guiding Principles on Business and Human Rights (UNGPs) which encourage businesses to undertake due diligence processes, and serves as the foundation of modern slavery laws. Members of the global anti-slavery network therefore serve as transnational intermediaries between regulators (national governments) and their targets (Multinational corporations (MNCs)), indirectly affecting the behaviour of companies (Abbott et al., 2017).

Anti-slavery and corporate accountability norms however are not automatically diffused into the national sphere and must be embedded into or filtered through the unique domestic political economy of each country (LeBaron & Rühmkorf, 2019; Cortell & Davis, 2000; Acharya, 2004; Gustafsson et al., 2023(a)). They are shaped and contested at the national

level by domestic actors as well as political, economic and cultural factors, hence they are not uniformly implemented in every country (LeBaron & Rühmkorf, 2019). Consequently, the design and stringency of modern slavery laws in each country tends to vary due to factors such as the strength and persistence of civil society advocating for stronger legislation, the intensity of business opposition and lobbying against more stringent legislation, and the political ideology and agenda of the current governing party.

In addition to the unique factors present in each country, there are different ideologies among the actors which comprise the global anti-slavery network and a country's association with a particular faction of the network also affects how norms are translated to the domestic context. This is evident in the clear divide between Anglospheric countries or regions, such as California, the United Kingdom (UK), Australia and Canada, and European countries, for example, France, the Netherlands, Norway, Germany and Switzerland, regarding the stringency of modern slavery laws enacted. Generally, Anglo countries, that is, English speaking countries with similar political and economic traditions, have adopted transparency legislation, while much of Europe has adopted mandatory human rights due diligence (MHRDD) laws. Transparency legislation is considered the weaker model of modern slavery law as it typically covers only limited types of harm such as child or forced labour. In contrast MHRDD laws addresses comprehensive human (and in some cases environmental) rights. This Chapter argues that Canada adopted transparency modern slavery legislation due to a combination of international norm diffusion (via a global anti-slavery network or assemblage) and a unique domestic political economy. Furthermore, Canada has positioned itself with its Anglo allies such as the United States of America (USA), UK and Australia in enacting a transparency law as opposed to MHRDD legislation.

This Chapter (along with Chapters Three and Four) addresses research question two which is "what factors influenced the introduction of modern slavery transparency legislation

into the Canadian parliament to combat forced labour in supply chains?" It begins by outlining the theories of regulatory intermediaries and norm diffusion, which together are useful for understanding how anti-slavery and corporate accountability norms are transmitted from the global to domestic sphere. The theory of regulatory intermediaries is utilized to explain the dissemination of norms via intermediaries, that is, the global anti-slavery network. This is followed by an explanation of norm diffusion theory in the context of active norm diffusion by domestic actors, as well as the political and economic factors, which have an impact on the domestication of outside norms.

Lastly, major themes which have emerged from the literature regarding the enactment of modern slavery laws in various jurisdictions will be used to assess whether these factors were also common in Canada or whether Canadian legislation emerged due to other dynamics such as a strong extractive industry. These themes include the persistence of civil society; business opposition or support; political and economic regulatory tradition; governing political party ideology; the momentum provided by the tragic collapse of Rana Plaza; key parliamentary or government figures and their personal convictions and cross-party coalitions. I will conclude by noting the importance of these factors in subsequent chapters, in determining why Canada chose transparency modern slavery legislation.

Dissemination of International Norms by the Global Anti-slavery Network, and Active Domestic Norm Diffusion

The global network or assemblage disseminating anti-slavery and corporate accountability norms has been described as a "modern day abolitionist movement" concentrated in the USA, UK and Australia (LeBaron & Rühmkorf, 2019, p. 720). The movement centres on dominant NGOs and IOs such as Free the Slaves, Walk Free and the International Labour Organization (ILO) as well as societal groups such as Christian churches,

migrant rights organizations and trade unions (LeBaron & Rühmkorf, 2019, pp. 720, 721). Chapter One explained that this epistemic network transmits these norms from the global to domestic sphere via soft law guidelines such as the UNGPs, and they are subsequently translated into either transparency or MHRDD laws in various jurisdictions. Two theories, that is, the theory of regulatory intermediaries and active norm diffusion theory, assist in understanding how the organizations which comprise the network act as intermediaries to influence the anti-slavery legislative process in various states including Canada, and how the domestic political economy of each country ultimately determines the form and stringency of the legislation adopted.

Regulatory Intermediaries Theory

Abbott, Levi-Faur and Snidal's theory of regulatory intermediaries is useful in explaining role of the organizations compromising this assemblage as indirect regulators in the regulatory process (Abbott et al., 2017). The theory presents a three party or more regulatory relationship between the rule-maker or regulator (R), the intermediary (I) and the rule-taker or target (T), that is, the RIT model (Abbott et al., 2017). The RIT model draws on new governance theory including decentred regulation or network governance to present a more accurate picture of transnational governance which involves important actors beyond the traditional binary of regulators (in this case national governments) and their targets (MNCs) (Abbott et al., 2017; Hardy & Ariyawansa, 2019). In fact, both regulators and targets may engage or be engaged by intermediaries to assist in achieving regulatory goals (Abbott et al., 2017, p. 15).

Abbott, Levi-Faur and Snidal widely define intermediaries as "any actor that acts directly or indirectly in conjunction with the regulator to affect the behaviour of a target" (2017, p. 19). Intermediaries are essentially "go-betweens" who stand between the regulator and its

target thereby making some parts of regulation indirect (Abbott et al., 2017, p. 19). Intermediaries may be private or public actors and may operate in the international or domestic sphere (Abbott et al., 2017, p. 15). Examples of intermediaries are civil society groups including NGOs, worker groups or unions; governmental bodies including transgovernmental agency networks or international organizations; and private sector actors such as auditors, accounting firms and certification companies (Abbott et al., 2017, p. 15; Hardy & Ariyawansa, 2019, p. 30). States also act as intermediaries when they encourage other states to comply with international norms (Abbott et al., 2017, p. 15). Prime Minister Theresa May's 2017 Call to Action to end modern slavery for instance, would be an example of the UK encouraging other states to adopt modern slavery legislation.

The role of intermediaries may be formal or informal, central or peripheral, explicit or tacit. Intermediaries such as FLOCERT (Fairtrade International's global certifier), may be formally engaged by regulators to conduct services such as certification audits and alternatively targets may formally engage such intermediaries to meet the standards of regulators (Abbott et al., 2017, p. 19). Informal arrangements occur for instance when a regulator enacts a rule requiring targets to make certain disclosures anticipating that NGOs and activist groups will monitor target compliance even though they were not formally engaged to perform this task (Abbott et al., 2017, p. 19).

The RIT model applies to regulation in the form of both soft law including international guidelines and hard law such as domestic legislation (Abbott & Snidal, 2000). The model therefore explains how transnational organizations comprising the global anti-slavery network such as the United Nations act as regulatory intermediaries via multi-stakeholder initiatives (MSIs) and voluntary guidelines such as the United Nations Global Compact and the UNGPs, which prescribe standards of behaviour to companies. Regarding hard law such as modern slavery legislation, the framework also accounts for the intermediaries who play more of a

significant role domestically in the norm diffusion process by influencing how the anti-slavery and corporate accountability norms are locally adopted and consequently the type of supply chain legislation enacted. As Abbott, Levi-Faur and Snidal noted, "intermediaries do not operate in a vacuum…like other actors, they are embedded in institutional environments that shape their roles, opportunities for action, capabilities and legitimacy" (2017, p. 24). Intermediaries assist in the development of regulation by advising on "problems of maladaptation to local conditions, difficulties of implementation and burdensome demands, barriers to effective monitoring…and how rules might be revised" (2017, p. 23). Intermediaries receiving feedback from targets can facilitate dialogue by informing regulators of the targets' views about amendments which lessen regulatory burdens while still achieving regulatory goals (2017, pp. 23-24).

Subsequent chapters will reveal domestic intermediaries in Canada, including World Vision Canada and various civil society groups, were influential in the consultation process for a Canadian modern slavery law. Therefore, as the following section will discuss, the diffusion of norms from the global to domestic sphere is not automatic but shaped and contested by various domestic actors including regulators, targets and intermediaries as well as institutional factors.

Norm Diffusion Theory: Active Norm Diffusion by Domestic Actors

A norm can be defined as "a standard of appropriate behavior for actors with a given identity" (Finnemore & Sikkink, 1998, p. 891). Although some definitions use the concepts of norms and institutions interchangeably, a norm "isolates single standards of behavior, whereas institutions emphasize the way in which behavioral rules are structured together and interrelate", that is, a collection rules and practices (Finnemore & Sikkink, 1998, p. 891). While some ideas never gain the necessary traction to become norms, influential ideas which become

norms play a potentially significant role in steering the behaviour of various actors (Gustafsson et al., 2023(a)). The strength and specificity of norms vary and some remain intentionally vague to assist with their spread internationally (Krook & True, 2012). This allows actors with "divergent interests to interpret and appropriate norms according to their needs and perspectives" (Gustafsson et al., 2023(a), p. 858). Different interpretations of anti-slavery and corporate accountability norms is apparent due to the variations of modern slavery legislation adopted in different countries.

The wave of modern slavery legislation following the rapid uptake of the UNGPs and tragic events at Rana Plaza signalled the "cascade of a new norm" on foreign corporate accountability (FCA) (Partzsch and Vlaskamp 2016, p. 978; Gustafsson et al., 2023(b), p. 891). Chapter One showed that attempts to combat modern slavery practices globally have predominantly been via soft law or private governance mechanisms. Voluntary mechanisms such as corporate social responsibility (CSR), MSIs and business human rights guidelines have therefore been the institutionalized practice in most countries for decades. Anti-slavery and FCA norms, in line with what the UNGPs intended, has been adopted by many European countries in the form of MHRDD legislation. In contrast Anglo countries, including Canada, have adopted the norms in the form of transparency legislation which is far less stringent and has been described as "toothless" (Gustafsson et al., 2023(a), p. 863).

What therefore is the reason for the difference in interpretation of these norms at the national level? The answer to what explains these variations in supply chain legislation across countries lies in the unique domestic political institutions and local actors present in each. This Chapter begins from the position that global anti-slavery and FCA norm diffusion via the anti-slavery network has taken place and the focus now turns to the domestication or domestic uptake of these international norms and its implications (Gustafsson et al., 2023(b); Gustafsson et al., 2023(a)). Scholars have put forward different theories regarding why important

variations are produced in interpretation of norms as they work their way through domestic structures.

The first wave of norm diffusion literature focused predominantly on the role of transnational agents and processes in spreading cosmopolitan or universal norms such as the promotion of human rights and campaigns against racism and genocide (Finnemore, 1996; Finnemore & Sikkink, 1998; Risse et al., 1999). Norm diffusion by these transnational agents, either as social movements or as norm entrepreneurs, was regarded as "teaching" morality and any resistance to these norms at the national level was seen as immoral and illegitimate (Acharya, 2004, p. 242). The focus was on "conversion rather than contestation" at the national level where the agency of local actors was severely downplayed (Acharya, 2004, p. 242). A second wave of scholarship has shifted away from the concept of norm diffusion from the global to domestic sphere as an automatic or passive process to seeing it as a negotiated process that is shaped by domestic actors, politics and cultural factors (Cortell & Davis, 2000; Acharya, 2004; LeBaron & Rühmkorf, 2019; Gustafsson et al., 2023(a)). This second wave of literature addresses why some global norms find greater acceptance in some domestic locales as opposed to others.

Acharya discusses the concept of norm localization which is a process of congruence building by local agents whereby they reconstitute an outside norm to make it a better fit with pre-existing local norms (2004, p. 244). To localize a norm is to imbue it with the characteristics of a specific place through discourse and framing, taking only those ideas which are or can be made congruent with local practices (Acharya, 2004). The foreign norm is therefore "pruned" with the intent of not replacing the existing institution but strengthening it, especially in instances where wholesale acceptance of the new norm could incur social and political costs (Acharya, 2004, pp. 245-246). This is especially true where influential local actors believe that their existing institutions are not harmful but merely inadequate and

therefore need to be strengthened and broadened with an infusion of fresh ideas (Acharya, 2004). In such cases it is far more likely that localization would occur rather than displacement of the old institution. This theory is therefore useful for understanding why Anglo countries including Canada have not adopted MHRDD legislation but transparency legislation which is closer to the already existing soft law, voluntary mechanisms utilized for decades. Additionally, as will be discussed later in this Chapter, strong opposition from the business communities may deter governments from accepting new norms like FCA in its entirety.

Localization goes beyond the influence of transnational actors in norm diffusion and prioritizes the local actors who build congruence by mobilizing popular opinion and political support for new norms (Acharya, 2004). These local actors can be individuals such as parliamentarians with an interest in implementing the new norm, NGOs or regional epistemic communities to name a few. Although localization can be used to prevent displacement, alternatively it can be used as a potential long term strategy for eventual displacement. Over time localization may cause an "incremental shift towards fundamental change or norm displacement" once local actors have become more familiar and experienced the new norm causing the initial resistance against it to weaken (Acharya, 2004, p. 253). Acharya specifies that this occurs at "the very long end of localization" and in fact may not happen at all but it at least creates the climate for change (2004, p. 253). This would explain the position of some domestic actors who view transparency legislation as a first step towards eventual MHRDD legislation after a period of adjustment, particularly for the business community.

In their attempt to theorise the reason for national variations in norm acceptance, Cortell and Davis discuss the concept of domestic norm salience or legitimacy within the context of domestic politics (2000, p. 66). Global norms have important effects on domestic politics. International norms, which Cortell and Davis define as "prescriptions for action in situations of choice" within the national political context, vary in strength (2000, p. 69). Not all global

norms resonate in domestic political debates and achieving salience requires that actors in the political arena accept the norm as a "guide for conduct and a basis for criticism including self-criticism" (Cortell & Davis, 2000, p. 69). Salient norms invoke a feeling of obligation and engender remorse or a need for justification when there is deviation from it (Cortell & Davis, 2000, p. 69). Any actor arguing on the basis of a salient norm during a policy debate therefore creates a prima facie obligation to comply and delegitimizes any alternative choices. Signs that a norm has obtained salience or legitimacy include when the norm makes an appearance in domestic political discourse and when it causes a change in national institutions (Cortell & Davis, 2000, pp. 69- 71).

Regarding the first sign, the norm usually enters political discourse via state or societal actors demanding change in policy. They usually invoke the norm to delegitimize the preferences of opposing actors. Growing salience is indicated by the formation of organised groups devoted to campaigning for institutional change or government committees or working groups tasked with formulating policies consistent with the global norm. Government committees and CSO campaigns for supply chain legislation are prevalent in most countries debating the enactment of a modern slavery law. Changes in domestic institutions, the second sign, occurs when the global norm becomes a part of domestic law (Cortell & Davis, 2000, p. 70). However, even greater salience is achieved if the new law displaces conflicting institutions, if it allows domestic actors to report violations, if it contains meaningful sanctions for violations and if it established a state unit for monitoring purposes (Cortell & Davis, 2000, pp. 70-71). Norms which fail to appear in domestic political discourse or alter domestic institutions have low salience. Norms which appear in domestic political discourse and produce some change in the state's institutions but still confront competing institutions can be said to enjoy moderate salience. Interpretation of the anti-slavery and the FCA norms into transparency legislation demonstrates moderate salience as only the reporting element is made

mandatory. There is no requirement to conduct due diligence and no sanction for failing to do so and negligently causing harm.

Gustafsson, Schilling-Vacaflor and Lenschow similarly address the way in which various actors, ideas, discourses, and institutional environments influence the domestic uptake of the FCA global norm (Gustafsson et al., 2023(a)). They argue that implementation and enforcement of modern slavery legislation are "highly political processes wherein competing ideas embedded within unequal actor constellations and institutional environments" determine the outcome of the legislation (Gustafsson et al., 2023(a), p. 853). They reference Acharya when stating that actors such as CSOs, governments and business associations build congruence between the FCA norm and local institutions by resisting, appropriating, adapting and framing the norm in ways that are more culturally acceptable (Gustafsson et al., 2023(a), p. 859). However they go further in explaining that global norms can become domestically embedded through for instance CSOs pressuring national governments to adopt the norm (bottom up approach) or through political elites being exposed to the norm via social learning and adapting it (top-top strategy) (Gustafsson et al., 2023(a), p. 859). As I will discuss in the final section, a bottom up approach was key to domesticating the FCA norm in most countries with supply chain legislation.

Regarding ideas and discourses, they note the contention between CSOs who have long campaigned for binding international law to regulate companies' human and environmental rights activities and business and state representatives who have lobbied very successfully for voluntary rules (Gustafsson et al., 2023(a), p. 859). Against this background, the quick uptake of the UNGPs was due to them being soft law but ironically challenges arose with the differing interpretations of this soft law into hard law across various jurisdictions (Gustafsson et al., 2023(a), p. 860; Mason et al., 2023, pp. 972-973). Policy discourse has been polarized between mandatory measures on one hand and voluntary measures on the other (LeBaron & Rühmkorf,

2019; Bueno & Kaufmann, 2021 Gustafsson et al., 2023(b)). Advocates of mandatory legislation stress the need to re-centre the state and implement strong enforceability measures due to the failure of voluntary approaches. Opposing coalitions have in contrast rejected the FCA norm and mandatory measures stating that stringent supply chain legislation would adversely affect the competitiveness of businesses and that the transnational nature of supply chains would make them near impossible to control (Gustafsson et al., 2023(a), p. 860).

The latter argument regarding businesses being adversely affected has certainly been utilised by Anglo countries and this use could be explained by the institutional environment in these countries. Gustafsson et al. note that "regulatory traditions and in particular varieties of capitalism are likely to impact on national supply chain regulations" (2023(a), p. 861). They distinguish between France's "statist institutional tradition" coupled with "strong anti-globalization sentiments" leading to enactment of a stringent MHRDD law and the UK's market capitalism and liberal approach in allowing business to operate autonomously which led to enactment of a weak, transparency law (Gustafsson et al., 2023(a), p. 860; Mason et al., 2023, pp. 973-974). Institutional environments therefore play a major role in explaining variations in domestic supply chain laws.

The regulatory intermediaries and active norm diffusion theories are therefore useful for understanding the role of a diverse set of actors and institutional factors within Canada regarding the enactment of transparency modern slavery legislation. These theories intersect throughout the thesis. For instance, as subsequent chapters will discuss, transnational and domestic intermediaries such as World Vision Canada and the Canadian Network on Corporate Responsibility (CNCA) were motivated by anti-slavery and FCA norms in their advocacy for supply chain legislation, and these laws in turn, particularly transparency legislation, rely on the reputational effects of non-adherence to these norms to spur behavioural changes in MNCs. Regarding localization and building congruence, the role of CSOs and parliamentarians in

securing political and industry support for FCA through transparency legislation, which is similar to corporate self-regulation already prevalent in Canada will also become apparent. Instances of intermediaries influencing the legislative process and active norm diffusion will be highlighted throughout the thesis.

In the following section, I will evaluate the reasons why the anti-slavery and FCA norms translated into transparency legislation in Canada. I will compare and contrast various political, economic and cultural factors in countries that adopted MHRDD and Canada. My goal is to uncover what key factors ultimately determined why Canada knowingly adopted weaker transparency legislation as opposed to MHRDD legislation which is arguably best practice globally.

Canada's Unique Domestic Political Economy as the Ultimate Determinant of its Transparency Modern Slavery Law

Various scholars have identified several factors in different jurisdictions that led to the successful enactment of supply chain legislation. In-depth studies about the factors behind the enactment of supply chain laws in different countries, especially those with a normative theoretical framework, are scarce as this is an emerging field. However, I did find the literature needed after a comprehensive search of regulation and governance journals. This evaluation will mainly refer to the UK, France and Germany, which provides three unique experiences that can be compared and contrasted with Canada. See **Appendix 1:** ***Table 2*** for a summary of the UK, French and German laws. Some factors are common while others are unique and the latter contributed to whether less stringent transparency legislation and more stringent MHRDD legislation with civil liability were enacted. While norm diffusion via the global anti-slavery network is a crucial piece of the puzzle, it is ultimately domestic actors and political and economic factors that determine the type of modern slavery legislation adopted in each

locale. This section will explore the importance of these key factors, which include the persistence of civil society; business opposition or support; political and economic regulatory tradition; governing political party ideology; the momentum provided by the collapse of Rana Plaza; the support of key parliamentary or government figures and cross-party coalitions. It will also evaluate whether or not they were significant to the type of legislation enacted in Canada.

i. Persistence of Civil Society Organizations

A common theme across the literature regarding the enactment of modern slavery legislation is the instrumental part civil society-led coalitions played in the process (LeBaron & Rühmkorf, 2019; Evans, 2020; Weihrauch et al., 2023; Gustafsson et al., 2023(a); Mason et al,. 2023). The rapid diffusion of anti-slavery and corporate accountability norms is largely credited to advocacy networks which act as regulatory intermediaries, and often branch out beyond human and environmental rights activists to include key politicians and industry associations although there are divergences over the form modern slavery legislation should take (Mason et al,. 2023). NGOs and investor coalitions who campaigned for and were instrumental in the passing of the California Transparency in Supply Chains Act (California Act) 2010 included the Alliance to Stop Slavery and End Trafficking (ASSET), the Coalition to Abolish Slavery & Trafficking (CAST), and the Christian Brothers Investment Services (CBIS) (Lunan, 2010). The work of these NGOs exemplify the bottom up approach, that is civil society pressuring national governments to adopt particular norms, and served as an example for other Anglo countries such as the UK, Australia and Canada.

In the UK, the emergence of a business led Transparency in Supply Chains (TISC) activist coalition was key in providing legitimacy to a transparency law (LeBaron & Rühmkorf, 2019). This coalition was comprised of religious bodies such as the British Quakers, the

Evangelical Alliance, the Church of England, and prominent NGOs such as Amnesty International, Anti-Slavery International, Unseen and the Walk Free Foundation (which was fundamental in the passing of the Australian Modern Slavery Act (MSA) in 2018) (LeBaron & Rühmkorf, 2019). While many of the NGOs who eventually endorsed transparency legislation continued to advocate for a stronger law along the lines of the Bribery Act 2010, they came to accept transparency law as a 'first step' in this process and strategically collaborated with industry to get the bill through parliament (LeBaron & Rühmkorf, 2019, p. 730; Robinson, 2015). An NGO leader provided insight into the motivation for this decision stating that "businesses aren't the only ones who need to demonstrate returns. We need to be seen as making an impact, and endorsing transparency seemed like the way to do it" (LeBaron & Rühmkorf, 2019, p. 731). NGOs in the UK therefore compromised with business associations in order to get a law, albeit a weak one, passed. As Chapter Four will show, key civil society groups such as World Vision who advocated for supply chain legislation in Canada also came to regard transparency legislation as a first step.

In France, the Duty of Vigilance law was developed in 2011 by "a small, peripheral group of young, female activists, together with lawyers and left-wing deputies", that is, the NGO Sherpa and its partners, seeking to build on the UNGPs (Evans, 2020, p. 662; Cossart et al., 2017, p. 317). They formed a working group to address the liability of parent companies and lobbied for four years during which the bill was tabled in 2013 and read twice in the National Assembly, twice in the Senate and also in Constitutional Court but was disregarded by government and opposed by business (Evans, 2020). What strengthened the activists' campaign was the involvement of human and environmental rights NGOs, legal justice advocates, Catholic socialists and trade unions. Amnesty International's involvement, in particular, solidified the legitimacy of the campaign as it was "a major international organisation with gravitas" (Evans, 2020, p. 671). The involvement of unions such as the

French Democratic Confederation of Labour (CFDT) added further legitimacy to the campaign in the eyes of the Socialist Party with which they were historically allied (Evans, 2020). The CFDT was crucial in showing support by signing open letters and facilitating meeting with ministers (Evans, 2020). Interestingly, union involvement was not a major factor in the passing of Canada's transparency law.

In Germany, CSOs and their campaigns were the key to the passing of MHRDD legislation in 2021 (Mason et al., 2023; Weihrauch et al., p. 2023). From as early as 2006, German NGOs formed the Corporate Accountability (CorA) Network, which advocated for "binding instruments that oblige companies to respect human rights and internationally recognized social and ecological standards and norms" (Weihrauch et al., 2023, p. 913). The opportunity to push for supply chain legislation came after the 2013 elections when as part of a coalition treaty the social democrat politicians negotiated a National Action Plan (NAP) where the government would implement a law if less than 50% of German companies failed to properly conduct due diligence as part of a monitoring and benchmarking exercise (Weihrauch et al., 2023, p. 915). CorA introduced a new initiative, the Initiative Lieferkettengesetz (ILG), which was a broader alliance of CSOs and business associations (Weihrauch et al., 2023, p. 916). Membership expanded to include unions and faith-based organizations whose strategic value was to invoke Christian values which would sway the centre-right parties (Weihrauch et al., 2023).

This coalition combined an emotional "human rights storyline (delegitimizing "irresponsible" companies) with scientific evidence after the results of the monitoring and benchmarking exercise showed that only 13%-17% of companies properly executed due diligence (Mason et al., 2023, p. 972; Weihrauch et al., 2023, p. 918). CorA is comparable to the Canadian Network on Corporate Accountability (CNCA), which was also formed in 2006 to advocate for stronger laws sanctioning the conduct of Canadian companies abroad. As far

back as 2012, the CNCA, in conjunction with other organizations, commissioned a report about the use of due diligence (Cossart et al., 2017). The key role of faith-based organizations was also a factor in Canada as World Vision, a Christian organization, began campaigning for a Canadian law. However the strength of industry associations, namely the extractive sector, in Canada outweighed these influences and resulted in weaker legislation, as Chapters Three and Four will discuss.

ii. Business Opposition or Support

The role of business or industry associations in influencing the type of law adopted is also a common theme across modern slavery legislation literature. Their powerful influence is often the determining factor as to the stringency of the supply chain legislation adopted, especially in more liberal economies. In the UK, industry actors derailed efforts to introduce stronger legislation by supporting the enactment of transparency legislation (LeBaron & Rühmkorf, 2019). Efforts to introduce legislation similar to the California Act 2010 in the UK was spearheaded by the Global Business Coalition Against Trafficking (GBCAT) and End Human Trafficking Now networks comprised of MNCs (LeBaron & Rühmkorf, 2019). Businesses including Amazon, IKEA and ethical investment groups formed a "transparency coalition" to deflect possible legislation which imposed criminal offences (LeBaron & Rühmkorf, 2019, p. 730). After the 2013 publication "It Happens Here: Equipping the United Kingdom to Fight Modern Slavery" recommended transparency legislation as a way to encourage companies to look into the issue without forcing any burdensome measures onto them, both the government and businesses leaned into the narrative of transparency legislation as a "first step" presumably towards stronger legislation in the future (LeBaron & Rühmkorf, 2019, p. 730). They also formed a coalition with prominent NGOs, which provided further legitimacy to the cause (see section i).

This coalition organized a business lobby to pressure the government and also formed an MSI called "Stronger Together Initiative" in a further attempt to thwart more stringent regulation with CSR (LeBaron & Rühmkorf, 2019, p. 733). Businesses lobbied so hard for transparency legislation because many of them were already required to report under the California Act 2010 and saw an opportunity for convergence in government requirement. Additionally, given that forced labour is more likely to occur in the supply chains of clothing and food companies, many of which were members of the coalition and MSI, it was in their best interest to prevent serious new forms of liability (LeBaron & Rühmkorf, 2019). Businesses therefore succeeded in the UK in lobbying for a weaker transparency law. Although the government tried to claim that the UK MSA 2015 was modelled after the UNGPs it was clear that the legislation was "private governance in disguise" and "business as usual" (LeBaron & Rühmkorf, 2019, p. 734). A similar dynamic occurred in Canada where industry mostly supported transparency legislation in a bid to ward off MHRDD legislation, as discussed in Chapter Four.

Although there was also strong business opposition in France, it did not derail the enactment of an MHRDD law. Opposition against the bill came mainly from the Movement of the Enterprises of France (MEDEF) and the French Association of Large Companies (AFEP) (Evans, 2020). They argued that the legislation would penalise French companies and jeopardise jobs and investment because competitors such as the rest of Europe, America and China would not be subject to the same liabilities. They also took issue with the law itself as having vague wording, unclear liabilities and financial damages that were too severe (Evans, 2020). Although amendments were made to the law, the essence of MHRDD with civil liability remained intact (Cossart et al., 2017). Similar arguments made by Conservative politicians and industry associations around more robust legislation undermining competitiveness also

emerged in Canadian parliamentary debates, which will be further discussed in Chapters Three and Four.

Businesses associations and centre-right politicians in Germany similarly argued that the competitiveness of German companies would suffer and that the legislation would impose even more burdensome bureaucracy (Weihrauch et al., 2023). Companies were very much in favour of preserving the existing voluntary mechanisms. However, civil society began recruiting companies who had expressed favourable sentiments about a MHRDD law or who they knew already had due diligence measures in place to speak publicly in support of the law (Weihrauch et al., 2023). They included smaller, fair trade companies, but also larger companies like Primark, KiK and Nestle Germany all of which had sustainability strategies for quite some time. The German car industry was an important one to gain the support of and this became a reality after the tragic collapse of the Brazilian Brumadinho dam in 2019 in which over 250 people died (Weihrauch et al., 2023). German inspection company Tüv Süd certified the dam as safe despite knowing it was not. Following this tragedy both BMW and Daimler publicly stated their support for a MHRDD law, and Volkswagen followed in 2020 (Weihrauch et al., 2023).

German car companies also supported the legislation in a continuing attempt to improve their reputations after the diesel scandal. Car companies also began forging alliances with civil society after the dismal results of the NAP monitoring and benchmarking results (see section I) (Mason et al., 2023). Companies also supported the law due to the level playing field it would create between responsible and irresponsible businesses (Weihrauch et al., 2023). Similar themes of businesses wanting a level playing field have emerged in Canadian debates, however, it was in support of transparency legislation as opposed to MHRDD.

iii. Domestic Institutional Environment: Political and Economic Regulatory Tradition

A country's political and economic institutions are key factors which influence the form and stringency of its modern slavery law. State-market relations are often complementary to way in which anti-slavery and corporate responsibility norms are operationalized. This is exemplified by the variations in supply chain legislation in countries with a liberal model like the UK, a state-centric model like France, and mixed model like Germany (Mason et al., 2023; Gustafsson et al., 2023(a)). The liberal model or market capitalist systems are characterised by competitive markets where autonomous business actors are allowed to set the parameters for corporate governance (Mason et al., 2023; Gustafsson et al., 2023(a)). The UK MSA 2015 reflects this regulatory tradition by relying on existing private governance and not establishing any new or stringent enforcement mechanisms (LeBaron & Rühmkorf, 2019; Gustafsson et al., 2023(a)). Canada, being so closely aligned with the UK and sharing its regulatory institutional traditions unsurprisingly enacted a very similar transparency law.

In contrast to the UK, France has had a long-standing acceptance of state intervention for problem solving (Evans, 2020). This state-centric or statist institutional tradition coupled with widespread anti-globalization sentiments were important factors which allowed for the passage of a stringent MHRDD law with civil liability (Evans, 2020; Gustafsson et al., 2023(a)). The ability to hold companies legally accountable for any human or environmental rights violations is "the broadest legal codification anywhere of HREDD enforcement for these concerns" (Mason et al., 2023, p. 973). Intense business lobbying succeeded in watering down the original bill which initially included a new liability regime and reversal of the burden of proof but such setbacks did not change the essence of the law (Cossart et al., 2017). Regarding the French political culture of scepticism about globalization and distrust of MNCs, a survey conducted before the Rana Plaza collapse showed that in comparison to the UK, Germany and

Netherlands, French citizens scored the highest in identifying globalization as a threat (Evans, 2020, p. 667). This is largely due to MNCs off-shoring jobs mainly to countries in the Global South which undermine French labour standards (Evans, 2020).

Germany is categorised as having a mixed model or "neo-corporatist traditions and patterns of managed capitalism" reflected in the negotiations between the state and business associations with regards to development of policy (Gustafsson et al., 2023(a)). Consequently, the German MHREDD law is based on administrative monitoring and enforcement by the state, namely the Federal Office for Economic Affairs and Export Control (BAFA) (Mason et al., 2023). It is a combination of soft measures including support for companies in meeting the requirements of the law and hard measures including sanctions for noncompliance with due diligence obligations (Mason et al., 2023). Unlike the French law, CSOs and unions are not entitled to bring civil liability claims against companies in German courts but must file such complaints through BAFA (Mason et al., 2023). A domestic institutional perspective therefore sheds lights on different policy development dynamics and explains the variations in policy outcomes.

iv. Governing Political Party Ideology

Another determining factor in the type of modern slavery legislation enacted in a particular jurisdiction is the ideology of the political party in power at the time. The UK MSA was "rushed into place with an eye to the May 2015 general elections" and "widely perceived as a legislative 'legacy' of the Conservative government" (Kotiswaran, 2016). The Conservatives were acutely aware that with the elections approaching the subject of immigration would sway votes. In 2010 they had promised to reduce immigration yet statistics showed that immigration had significantly increased (Robinson, 2015). In order to counter the threat of other parties better addressing the British public's immigration concerns, the

Conservatives introduced the Immigration Act 2014 which limited undocumented migrants' access to public services (Robinson, 2015). However, the Conservatives knew that such harsh treatment of migrants would alienate Anglican and Catholic church-goers who were a core part of their electorate. They therefore used the MSA to project the image of providing assistance to slaves who were trafficked to the UK for the purpose of labour exploitation, blurring the lines between immigration and labour (Robinson, 2015; Fudge, 2018). Conservatives regularly compared "William Wilberforce and his crusade against the transatlantic slave trade from his seat in the UK parliament" to Britain's role in abolishing new slavery as it did the old (Robinson, 2015, pp. 2-3). The UK MSA was therefore as much a diversion from the government's anti-immigration agenda as a commitment to ending modern slavery (Robinson, 2015; Fudge, 2018).

Clause 54 of the UK MSA, which deals with transparency in supply chains, was inserted fairly late into the parliamentary process. NGOs such as the Ethical Trading Initiative (ETI) pushed for its conclusion and continues to monitor compliance with the clause (Craig, 2017). Although the clause is weak the Conservative government was of the view that naming and shaming was an effective enough tactic to get companies to comply and take effective action (Craig, 2017). Despite disagreement over this strategy, advocates did not want to prevent enactment of a bill that had all party support (Craig, 2017). Subsequent chapters of this thesis will reveal a similar dynamic in Canada regarding the cross-party support for a transparency bill despite major reservations by CSOs and the National Democratic Party (NDP). Moreover in Canada, both the Liberal and Conservative parties have been reluctant to potentially affect the competitiveness of businesses.

In stark contrast to the UK Conservatives, in France the Socialist Party led by President François Hollande was in power from 2012 to 2017. It was unusual to have a governing socialist party in Europe at that time but following street protests against unemployment,

austerity, the favouring of business in response to the Great Recession and Sarkozy's affiliations with the wealthy elite, leftist parties had gained popularity (Evans, 2020). During his presidential campaign President Hollande vowed to renew social democracy, sparking hope in civil society (Evans, 2020). In response to activists seeking legislative support for a supply chain law, President Hollande, along with over 70 National Assembly deputies, pledged support and expressed the hope that "the principles of the responsibility of the parent companies for the actions of their overseas subsidiaries be translated into law" (Evans, 2020, p. 672). Activists therefore viewed the Socialists as sympathetic to the cause, as opposed to the previous right-wing administration, and frequently emphasised the five-year window of opportunity to get a law passed under this administration (Evans, 2020). This unique opportunity is comparable to the building of momentum for a modern slavery law in Canada during the 2021 federal elections with both Liberals and Conservatives promising to address supply chain legislation and the minority Liberal government making it a part of their mandate.

Germany's socialist party was also instrumental in the enactment of a MHRDD law. From 2013 to 2021 the German government led by led by Chancellor Angela Merkel was a coalition of center-right parties Christlich Demokratische Union (CDU) and Christlich Soziale Union (CSU) and center-left party Sozialdemokratische Partei Deutschland (SPD) (Weihrauch et al., 2023). While the CDU and CSU were reluctant to support a MHRDD law, the SPD supported its enactment by pushing for a NAP and suggesting a benchmarking and monitoring procedure (see section i above).

Following the September 2017 elections, the parties once again entered into coalition negotiations. The SPD were able to use their leverage to insert a provision into the coalition agreement that "provided the NAP monitoring fails the envisioned benchmark, we [the coalition partners] will take legal measures" (Weihrauch et al., 2023, p. 915). The failure of at least 50% of companies to meet due diligence requirements of the exercise was the catalyst to

passing the law. After the results were published on 14 July 2022, Chancellor Merkel on 15 July 2020 decided a law needed to be enacted and tasked the economic, labour and development ministries to decide on its exact contents (Weihrauch et al., 2023). The NAP was therefore a unique factor in Germany which was crucial to successfully enacting legislation.

v. Momentum Provided by the Collapse of Rana Plaza

Public outrage over the tragedy of Rana Plaza certainly assisted NGOs and activists globally in their campaign for modern slavery legislation. UK, European and North American companies were implicated the incident having used factories in the building complex as suppliers. In the UK, organizations such as the ETI noted that Rana Plaza was a turning point for many of their member companies, particularly those in the retail sector, in recognising the need for legislation to address worker exploitation (Berman, 2016).

In France, the mainstream media made direct correlations between Rana Plaza, MNCs, globalization and a lack of adequate legislation to hold companies accountable for their actions overseas (Evans, 2020). The tragedy raised heated debates about the accountability of MNCs for the labour and environmental standards in their supply chains (Weihrauch et al., 2023). Although other incidents such as the Ali Enterprises and Tazreen fires of 2012 were also incorporated into the debate, Rana Plaza was the focal point of the civil society's moralizing strategy (Weihrauch et al., 2023).

The impact of Rana Plaza was felt in Canada with a class action lawsuit being filed against Loblaws (*Das v George Weston Limited,* 2018 ONCA 1053). CSOs in Canada used the momentum of Rana Plaza to push for supply chain legislation, which is discussed in Chapter Four.

vi. Key Parliamentarians and Government Officials

In most jurisdictions the literature on the enactment of modern slavery legislation highlights key parliamentary or government officials who were important in supporting supply chain legislation at the highest level. These parliamentary figures have various motives for supporting such legislation but their role as intermediaries in amassing local support for these laws, that is, congruence building and localization of anti-slavery and FCA norms in their respective countries, is a common theme.

British Prime Minister Theresa May was a key architect of the UK MSA 2015 during her time as Home Secretary. On its enactment on March 26, 2015 she deemed it to be "world-leading" legislation (Craig, 2017, p. 16; Kotiswaran, 2016). May made combating modern slavery a "personal priority" in 2013 and she was very much aware that her party's electoral success depended on her anti-slavery crusade (Robinson, 2015, p. 4). The use of the MSA was strategic in pre-emptively countering any allegations of the Conservatives regressing to "the nasty party", a term coined by May in 2002, in light of their anti-immigration measures (Robinson, 2015, p. 4). While May's sponsorship of the MSA might have been contradictory in light of the Conservatives' political position she kept a high profile on the issue (Craig, 2017).

In France, the Cabinet was uninterested in the Duty of Vigilance Bill mainly due to the disinterest of Minister of Economy Emmanuel Macron (Evans, 2020). However, in August 2016 Macon vacated his ministerial post to focus on his presidential campaign and was replaced by Michel Sapin, "who became a key advocate, putting the bill back onto the legislative agenda" (Evans, 2020, p. 675). This was very fortunate because even though the socialists were projected to lose the upcoming elections, the bill was adopted with under a week left before parliament closed (Evans, 2020).

Gerd Müller, CSU politician and Minister of Development and Cooperation in Germany, announced his support for a MHRDD law in 2018 (Weihrauch et al., 2023). He was an unusual advocate; although his political affiliation was right wing, he acted against the majority of his party. His support for the law was due to his "strong Christian beliefs and personal dismay over Rana Plaza" (Weihrauch et al., 2023, p. 918). In the year following the collapse of Rana Plaza, Müller formed the Textilbündnis or textile alliance, which is an MSI aimed at improving working conditions in the supply chains of German textile companies (Weihrauch et al., 2023). His advocacy for the law was in part due to his "frustrating negotiations in the Textilbündnis" as many textile companies simply refused to change their practices (Weihrauch et al., 2023, p. 918). This theme of the significance of key political and governmental figures also applies to Canada as MP John McKay, who sponsored the initial draft of Canada's MSA, played a critical role in advancing modern slavery legislation. McKay's inspiration, like that of Theresa May was William Wilberforce, and his partnership with Senator Julie Miville-Dechêne was critical to adoption of the Canadian modern slavery law and will be discussed in subsequent chapters.

vii. Cross-Party Coalitions

The role of cross-party coalitions in the adoption of modern slavery laws is also a common feature across the literature. In 1995, the British parliament established a Human Trafficking and Modern Slavery All Party Parliamentary Group (APPG) when information on trafficking into and within the UK started to surface (Craig, 2015). The Canadian parliament similarly established an APPG to End Modern Slavery, which took as its inspiration the UK group. This forum facilitates the discussion of issues surrounding modern slavery and potential solutions. The Canadian APPG was very influential in solidifying cross-party support for the modern slavery bill sponsored by John McKay. In France, NGOs identified three deputies with

an interest in global justice, namely, Danielle Auroi of the Greens and President of the European Affairs Commission; Philippe Nogues, a Socialist and President of the National Assembly's CSR Study Group; and Domonique Potier, a Socialist with affiliations to the Catholic Committee against Hunger and for Development- Solidarity Earth **(**CCFD-Terre Solidaire), a Catholic NGO (Evans, 2020). They formed a cross-party coalition to support the enactment of legislation. Similarly in Germany, Gerd Müller (see section vi) formed an alliance with SPD's Minister of Labour Hubertus Heil (Weihrauch et al., 2023). Both used their ministerial offices to advocate for a MHRDD law.

These common factors will be observed throughout the thesis when considering the domestic actors and political and economic factors influenced Canada's MSA. Factors more unique to Canada such a powerful extractive sector, the impact of the covid-19 pandemic and the media scandals surrounding forced labour, and Canada's close trading ties with the USA will also be discussed.

Conclusion

This Chapter argues that Canada adopted transparency supply chain legislation due to a combination of international norm diffusion, via a global anti-slavery network or assemblage, and a unique domestic political economy. It used the theory of regulatory intermediaries and norm diffusion theory to make this argument. The second wave of norm diffusion literature was particularly helpful in understanding the role of local actors, politics, economics and cultural factors in creating variations of modern slavery legislation in different jurisdictions. The way in which domestic actors shape global norms such as anti-slavery and foreign corporate accountability to fit pre-existing local institutions (voluntary as opposed to mandatory regulatory mechanisms) will be highlighted in this thesis. This Chapter also showed that Canada has positioned itself with its Anglo allies such as the UK, USA and Australia in

enacting a transparency law as opposed to MHRDD legislation. This is largely in part to shared political, economic and regulatory traditions, for instance, more liberal economies in which industry or business associations define the parameters of corporate governance.

This Chapter therefore addressed research question two by looking at the factors which influenced the introduction of modern slavery transparency legislation into the Canadian parliament. Chapter Three will begin to outline Canada's long history of attempts to regulate the activities of MNCs abroad by looking at how the Conservatives tackled this issue from 2006-2015. It will further address research question two by emphasizing how international norms were filtered through Canada's distinctive political economy.

Chapter 3

Canada's Domestic Political Economy: The Conservative Era 2006-2015

> What I discovered is that legislation is deeply political and if industry is hell-bent on blocking any kind of accountability and regulation, you have to work with what's viable…and recognize that this is political.
>
> —Cindy Berman, Ethical Trading Initiative, *personal communication, 2021*

Introduction

As Chapter Two highlighted, a country's national political and economic institutions are important in influencing the form and stringency of modern slavery legislation adopted. This was apparent when assessing the way in which global anti-slavery and foreign corporate accountability (FCA) norms were filtered through domestic institutions in the United Kingdom (UK), France and Germany to produce either a weaker transparency law or a stronger mandatory human rights due diligence (MHRDD) law. This Chapter will focus on the features of Canada's domestic political economy which influenced a transparency law being introduced into parliament and ultimately passed. Canada's domestic political economy is a unique mix of features. These include Canada's international alignment with Anglo countries which tend to lightly regulate business, alignment of its trade policies with that of the United States of America (USA), the significant lobbying power of its mining industry, Liberal and Conservative political parties which support limited or no regulation of business, and civil society organizations (CSOs) formed to advocate against the mining industry's human rights and environmental abuses abroad. As this Chapter and Chapter Four will illustrate, these features of Canada's domestic landscape have shaped the regulation of business since 2006.

The events which occurred from 2006-2015, when the Conservatives led by Prime Minister (PM) Stephen Harper formed government, set the stage for the passage of a transparency modern slavery law in Canada. These events included immense resistance from the mining industry to a shift away from voluntary corporate self-regulation, which was being considered by the former Liberal government on recommendation of the Parliamentary Standing Committee on Foreign Affairs and International Trade. The Harper Conservative government supported the mining industry's preference for continued self-regulation by implementing more light-touch mechanisms such as the Extractive Sector Corporate Social Responsibility (CSR) Counsellor, and the Extractive Sector Transparency Measures Act (ESTMA) 2014. ESTMA 2014 would eventually be used as a model for Canada's transparency modern slavery law. These regulatory initiatives implemented during the Conservative era did little to alter the conduct of Canadian mining companies abroad.

This time period also highlighted key parliamentary figures and saw the formation of CSOs crucial to the events which led to Canada's transparency modern slavery law. Liberal Member of Parliament (MP) John McKay, and New Democratic Party (NDP) MP Peter Julian, tabled Bills C-300 and C-354 respectively in 2009. Bill C-300 sought to impose serious consequences on mining companies for violating human rights abroad including withdrawal of government funding. Although the bill did not pass, it brought awareness to the issue of FCA. MP McKay would in the future be the first to introduce draft transparency modern slavery legislation into the Canadian parliament. Bill C-354 sought to provide foreign victims of multinational corporations (MNCs) access to Canadian courts. This bill also did not pass, but MP Julian would eventually sponsor a MHRDD law as a stronger alternative to Canada's transparency modern slavery law. The formalization of CSOs in favour of stronger regulation of mining companies into the Canadian Network on Corporate Accountability (CNCA) also occurred during this period. In contrast the willingness of other CSOs, such as World Vision,

to collaborate with mining companies also became apparent during this timeframe. This is significant as the dynamic of differing views among these CSOs would be same regarding the stringency of Canada's modern slavery law.

This Chapter addresses research questions two and three, that is, "what factors influenced the introduction of modern slavery transparency legislation into the Canadian parliament to combat forced labour in supply chains?" and "where is Canada situated in the landscape of emerging regulatory techniques to combat forced labour in supply chains?" respectively. It is structured in two sections. The first section outlines the key features of Canada's domestic political economy emphasizing the importance of Canada's Anglo ties, trade relationship with the USA, political party ideology, the mining industry, and civil society in shaping anti-slavery and FCA norms into transparency legislation. The second section will explore the impact of the mining industry's resistance to regulation from 2006-2015. This section will describe how the mining industry and the Harper Conservative government opposed stringent legislation and instead supported the status quo of corporate self-regulation. I will then conclude by highlighting emerging themes from the Chapter such as the importance of parliamentary committees and parliamentarians in keeping FCA issues on the political table, the far reaching influence of the mining industry, the differing views of CSOs who oppose or collaborate with the mining industry, and the importance of the ruling party in determining legislation stringency.

I. Key Features of Canada's Domestic Political Economy

In order to understand why Canada enacted a transparency instead of a MHRDD modern slavery law, it is first crucial to set out the relevant features of the Canadian domestic political economy which influenced this decision. This section will outline how anti-slavery and FCA norms promoted by the global anti-slavery network were filtered through Canada's

political economy to ultimately take the form of light-touch, disclosure regulation of MNCs. This context includes Canada's position as part of the Anglosphere and the shared culture and values of these countries including market freedom with limited government intervention. Canada's geopolitical position as neighbours with the USA and how it aligns its legislation and trade policies with the USA is also an important factor. A significant feature is the ideology of Canada's political parties, especially the ruling party at the relevant time, as it determines the type of legislation lightly to be enacted. The Liberals' support for limited business regulation, specifically of the mining industry, as well as the NDP's support for business regulation in stark contrast to the anti-regulatory position of the Conservatives is a key characteristic and important theme. Finally, a powerful mining industry and the civil society groups which have opposed its activities in developing countries for decades are important factors which will be discussed in this section.

i. Cultural and Political Links to Anglosphere

Canada's close ties with other core Anglosphere countries (namely the UK, USA, Australia and New Zealand), helps to explain why it enacted a transparency law. Membership in the Anglosphere means adherence to the customs and values which comprise the core of English speaking cultures (Bennett, 2002). These customs and values include "individualism, rule of law, honouring contracts and covenants, and the elevation of freedom to the first rank of political and cultural values" (Bennett, 2002, p. 111). Anglo countries have the shared colonial heritage of formerly belonging to the British Empire which is evident in their similar political systems. The Canadian federal system consists of two tiers of government, that is, the federal and provincial governments that share political power (Richard, 2005). Similar to the other four core Anglo countries, Canada has a bicameral federal legislature meaning that is composed of two houses, the Senate and the House of Commons. The UK, Canada, Australia

and New Zealand also retain the British monarch as their head of state and are founding and current members of the Commonwealth.

In addition the similar political systems Canada and its Anglo allies also have shared cultural and economic traditions that persist including the common law system legal tradition based on case law and legal precedent (Pejovic, 2001). This is in contrast to the civil law system, found in countries such as France and Germany, which originated in mainland Europe and takes the form of broad legal codes (Pejovic, 2001). The Canadian province Quebec has a civil law system due to its history as a French colony. Canada therefore has cultural ties to France as well, but as this Chapter and the following chapter will discuss, the Anglo influence dominated when it came to enactment of modern slavery legislation in Canada. Anglo countries favour liberal, market economies or market capitalist systems (Bennett, 2002). They are major proponents of globalization with the UK and USA in particular being drivers of neoliberal ideology since the 1970s which greatly facilitated the growth of complex transnational supply chains (Harvey, 2005; Mason et al., 2023; Gustafsson et al., 2023(a)). This ideology of the Anglosphere explains why light-touch transparency legislation has been enacted by most Anglo countries including Canada.

Within the Anglosphere, Canada has a particularly close trading relationship with the USA largely due to its close geographical proximity. Trade with the USA is therefore another factor which influenced Canada's enactment of a transparency law.

ii. Trade Relationship with the USA

Although Canada has historical ties to the UK, it has fallen "primarily into the American sphere of economic and cultural influence" (Bull, 1959, p. 585). Canada and the USA's partnership has been forged though factors such as a shared land border, similar democratic values and complex economic ties. Canada-USA trade is built on long established binational

supply chains in which approximately 80% of Canadian goods are exported to the USA to feed its supply chains for final goods (Government of Canada, 2023). In 2022, trade in goods and services between Canada and the USA was over $1.2 trillion which represented two thirds of Canada's total trade globally (Government of Canada, 2023). Canada has therefore always sought to protect this trade relationship and align its legislation and trade policies with that of the USA. The USA's influence on Canada's approach to modern slavery will be seen later in the Chapter and also in Chapter Four.

A more direct influence on the type of legislation passed is the political party in power. The ideology of Canada's political parties is therefore crucial to explore.

iii. Political Party Ideology

In order to understand why voluntary, soft law mechanisms have been utilised for so long in Canada to regulate MNCs, it is crucial to understand the ideologies and interests of Canadian political parties. The Canadian federal legislature is structured along party lines, policy debates are driven by parties and parties determine what interests are heard in parliament (Cross, 2004). A popular argument over the last few decades has been that in advanced industrialized democracies, political parties have become "less and less distinguishable to the point of being nearly identical, having similar ideologies and policy platforms" (Bélanger, 2003, p. 539). However, Canadian political parties continue to be differentiated based on party image and issue ownership (Bélanger, 2003). Parties craft their image based on their history of policy stands and performance when compared to competing parties. To keep appealing to their voter bases, the policy positions taken by the parties must remain fairly consistent with their past positions and commitments. Policy consistency is how a party builds its reputation which is established over a long period of time and changes very minimally because it is predominantly driven by the interests of the party's traditional, stable constituency (Bélanger,

2003). Party image is also grounded in the issues which initially underlay a party's birth. Left-wing parties, for instance, are perceived to be strong regarding issues of unemployment, welfare and education while right-wing parties are known for placing importance on defence and tackling crime, immigration and inflation (Bélanger, 2003, p. 540). Issue ownership, therefore, refers to the long term reputations parties build based on specific issues.

While issue ownership ensures the continued support of a party's voters, it also constrains a party's policy movements within the realm of what its supporters expect. Additionally, a party's performance while forming government allows voters to assess how it deals with important issues (Bélanger, 2003). While holding office, a ruling party can either cement its reputation depending on the way it deals with the issues it prioritizes or alternatively potentially ruin its image by mishandling a particular issue. This is true in the case of Canadian political parties and their lack of stringent regulation regarding the issue of foreign corporate responsibility while in office. Only two parties have held power at the federal level in Canada, the Liberals and Conservatives (Cross, 2004; Farney & Rayside, 2013). After these parties the NDP has consistently been a third-party presence in parliament (Farney & Rayside, 2013). These three parties along with the Bloc Québécois and Green Party of Canada (Greens) comprise the five main political parties currently represented in Canada's parliament. The ruling party, its reputation and ideologies is crucial in determining what laws may be passed.

The Liberal party is the oldest, most successful political party, forming government twenty times during the twentieth century, and often being coined Canada's "natural governing party" (Carty, 2015, p. 3). The party, which identifies as centrist an at times centre-left, has been successful due to its ability to adapt and respond to global and domestic changes (Lang, 2010; Carty, 2015). For instance, the party pivoted from a right-wing position in the late eighteenth century where limited government and free trade were prioritized to a more left-wing position post World War II when they expanded the welfare state (Crowley et al., 2010;

Lang, 2010). The Liberals' success has also been due to positioning itself as the party of national unity with the unique capacity to serve a broad range of diverse groups including French Canadians, immigrants and the LGBTQ community (Cross, 2004). The Liberal Party is a centrist, nation building party which supports social welfare programs alongside a free market economy (social market economy) where corporations are subject to regulation but nothing overly burdensome (Farney & Rayside, 2013). The Liberals' light-touch approach to regulating MNCs is therefore a direct result of the party's ideology.

In contrast to the Liberals, the Conservative base consists of those who place themselves on the right. The party has gone through several transformations beginning with the centre-right Progressive Conservative (PC) Party formed in 1942 (Farney & Rayside, 2013). The PC had some success during the late twentieth century until its supporters began finding its policies to be too moderate like the Liberals (Bélanger & Godbout, 2010; Farney & Rayside, 2013). The dissatisfaction of supporters led to the creation of a rival right-wing party, the Reform Party, which was firmly committed to neoliberalism, sought to reduce social programs and opposed high immigration levels, policies protecting bilingualism and LGBTQ rights (Farney & Rayside, 2013). The Reform Party suffered from votes being split with the PC and attempted to rebrand as the Canadian Alliance with a supposedly softer right-wing agenda (Bélanger & Godbout, 2010). However, much of the Alliance's ideology was the same as the Reform Party. Consequently, Alliance leader Stephen Harper proposed a merger of the Alliance and PC. The Conservative Party of Canada was formed in December 2003 with members of the former Reform/Alliance dominating party policy (Farney & Rayside, 2013). The Conservative party's ideology centres on fiscal conservatism, law and order, moral traditionalism/family values (with strong support from Evangelical Christians) and a radical emphasis on the free market meaning very anti-regulation of business (Farney & Rayside,

2013). The Conservatives' support for light or no regulation for business, specifically the mining industry, is a key theme in this Chapter.

The NDP is a social democratic party positioned to the left of the Liberals. The party was formed in 1961 as a result of the joint efforts of the Co-operative Commonwealth Federation (CCF) and the Canadian Labour Congress (CLC) "to establish the political arm of organized labour in Canada" (Savage, 2021, p. 77). The CCF's transformation into the NDP was intended to increase the participation of organized labour in the party's councils and conventions which was achieved by its more inclusive union affiliate structure (Archer, 1990; Savage, 2021). The NDP supports a mixed economy but is committed to equality of condition via redistributive wealth and expansion of social programs (Wiseman & Isitt, 2007). The party played a key role in the development of universal healthcare and pensions, and has been coined the "social conscience" and watchdog of parliament (Bélanger, 2003, p. 546; Wiseman & Isitt, 2007). Similar to the Liberals, the NDP supports diverse groups including the youth, visible minorities and the LGBTQ (Cross, 2004). The party has never formed government at the federal level but has often acted as a balance of power in many minority governments (Lang, 2010; Savage, 2021). The NDP has consistently supported robust business regulation as will be discussed in this Chapter and Chapter Four with regards to Canada's modern slavery act.

Regarding the Bloc Québécois and Greens, the Bloc Québécois is a sovereigntist or separatist party founded in 1991 (Bélanger & Godbout, 2010). The party is social democratic but its main agenda is to promote Quebec's interests in parliament (Bélanger, 2003; Bélanger & Godbout, 2010). The Green Party was founded in 1983 to address environmental concerns but has only recently in the twenty-first century gained more support and prominence at the federal level (Wiseman & Isitt, 2007; Lang, 2010).

Political party ideology, particularly of the Liberals, Conservatives and the NDP, is important for understanding the type of laws each party would be inclined to pass. It should be

noted that the Liberals and Conservatives are not entirely dissimilar with regards to their support for limited regulation of business. This similarity is crucial with regards to the regulation of MNCs in general but specifically the mining industry. The mining industry, which has close ties to both the Conservative and Liberal parties, has been a source of controversy for its unsavoury activities in the Global South.

iv. Powerful Mining Industry

Canadian extractive companies — those operating in the mining, oil and natural gas industries — contribute significantly to Canada's economy. An estimated 75% of the world's mining and exploration companies are headquartered in Canada (Neve, 2010; Block, 2017). In 2020, mining accounted for "692,000 jobs, contributed $107 billion or 5% to Canada's [gross domestic product] GDP," and minerals exploration accounted for "$102 billion or 21%" of domestic exports (Dowling, 2022). Canada's extractive sector is also dominant globally. In 2019, "publicly traded Canadian-based mining and exploration companies were present in 96 foreign countries, and two-thirds of their total $263.2 billion assets were located abroad" (Dowling, 2022).

Transnational mining companies have come under fire for their lack of respect for human and environmental rights when operating abroad, specifically in developing countries such as Latin America (Ciupa & Zalik, 2020). Canadian mining companies and their subsidiaries have been linked to atrocities such as spillage of hazardous waste, intimidation, rape, murder and forced labour abroad (Whittington, 2009; Keenan, 2010; *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5). Despite this, the industry continues to be heavily financed by the federal government. Extractive companies are the greatest recipient of funding from state owned corporation Export Development Canada (EDC), which civil society argues runs

counterintuitive to Canada's general stance against human rights violations (Keenan, 2010; De Souza, 2016).

The Prospectors and Developers Association of Canada (PDAC) and the Mining Association of Canada (MAC) are prominent bodies representing the extractive sector. They are powerful lobbyists and they, along with the Canadian Chamber of Commerce (the CCC), have lobbied extensively over the years against more stringent efforts to regulate the activities of MNCs abroad. This Chapter and the following chapter will show the major influence these business associations have exerted on both the Conservative and Liberal parties. These associations also have an extremely contentious relationship with many Canadian civil society groups over the issue of foreign corporate accountability. These civil society groups played a crucial role in holding mining companies accountable in the absence of legislation.

v. Civil Society Organizations

As the activities of Canadian mining companies abroad increased during the late twentieth century, particularly in Latin America, Canadian CSOs paid close attention to the human rights abuses they were committing globally (Ciupa & Zalik, 2020). These organizations included MiningWatch Canada, Kairos and the Halifax Initiative. MiningWatch, is a non-governmental organization (NGO) founded in 1999 and based in Ottawa, pushes back against the mining industry's ability to influence legislation, mislead the public, and bulldoze communities (particularly indigenous communities) and ecosystems in its quest for profit (MiningWatch, 2023). Their goal is to assist communities affected by mining and extraction activities to achieve access to justice and reparations for harm suffered (MiningWatch, 2023). Kairos: Canadian Ecumenical Justice Initiatives, founded in 2001, is a Canadian joint-venture, faith-based ecumenical organization which advocates for ecological justice, indigenous rights, gender justice for women and migrant rights (Kairos, 2023). The program is administered by

the United Church of Canada, which partners with Canadian churches of various denominations as well as civil society in the Global South to raise awareness about Canadian policies which negatively affect its partners in the Global South (Kairos, 2023). MiningWatch and Kairos were both members of the Halifax Initiative Coalition, which was founded in 1994 by CSOs seeking more transparency and accountability from international financial institutions (World Bank and International Monetary Fund) regarding their policies (Halifax Initiative, 2023). The Coalition also promotes transparency and accountability regarding the overseas operations of Canadian companies, with emphasis on the resource extraction and mining sectors, by exposing the ineffectiveness of current legislation and developing alternative proposals (Halifax Initiative, 2023).

Members of the Halifax Initiative also included Oxfam Canada, the Canadian Council for International Co-operation, the Catholic organization Development and Peace and trade unions and labour organizations such as the CLC, the Canadian Auto Workers (CAW) and the United Steelworkers Union (USW) Humanity Fund, notably all affiliate members of the NDP. As of 2015, the Halifax Initiative stopped operating but a new organization, Above Ground, was established to continue and build on its work (Halifax Initiative, 2023). These prominent NGOs such as MiningWatch, Kairos and Above Ground, which oppose the mining industry's activities therefore have close ties to the labour movement and the NDP (but remain non-partisan). This connection sheds light on the collaboration between these groups and the NDP to propose a stringent modern slavery law, as will be discussed in Chapter Four. As we will see in the following section, contention between civil society and the mining industry heightened as the minority Liberal government considered stronger regulation of the mining industry.

II. Resisting Regulation of Canadian Corporate Behaviour Abroad: The Mining Industry, 2006- 2015

In order to determine why Canada passed a transparency modern slavery law, it is crucial to examine the events which led to the passing of the legislation. In this case the first relevant time period selected is 2006 to 2015. With the federal election on January 23, 2006, the federal government shifted from the Liberal Party led by Paul Martin to a minority government under the Conservative Party led by Stephen Harper. Under the Liberals progress had been made in parliament regarding potential legislation to regulate mining companies, which signaled a move away from voluntary corporate self-regulation. The election of the Harper Conservative government, which was very pro-business, derailed this progress. During this period, Liberal MP John McKay tabled Bill C-300, which aimed to regulate the extractive sector. This bill generated immense push back from the mining industry, highlighting the industry's influence on both the Conservative and Liberal parties, which ultimately failed to support the bill. Nonetheless, this event emphasized the importance of MP John McKay as a key parliamentary figure in support of corporate regulation, as he would also be the force behind introducing Canada's Modern Slavery Act into parliament. NDP MP Peter Julian also stood out during this period by tabling Bill C-354 which would allow foreign victims of MNCs' activities access to Canadian courts. Although it did not garner as much attention as Bill C-300, MP Julian would continue advocating for increased corporate regulation and eventually a MHRDD modern slavery law in collaboration with civil society.

This period also saw significant growth and formalization of CSO coalitions, both opposing the activities of the mining industry and also those willing to work more collaboratively with the industry. NGOs opposed to the industry, including MiningWatch and Kairos, which formally became the Canadian Network on Corporate Accountability (CNCA) in 2006. In 2007, NGOs willing to work together with the mining industry, such as World

Vision Canada and Plan Canada, joined a group called the Devonshire Initiative (DI). The DI supports the development of communities in which natural resource extraction projects are based. These are important developments because the same CSOs would later be involved with advocating against and for Canada's transparency modern slavery act.

Lastly, there were also significant regulatory initiatives implemented by the Harper government to regulate the mining industry including the office of the Extractive Sector CSR Counsellor meant to deal with complains against mining companies, and Bill C-474 and ESTMA 2014, which regulates payments by extractive sector companies to domestic and foreign governments. The various private member bills and government initiatives were precursors to the enactment of Canada's modern slavery legislation. The rest of the Chapter focuses on these regulatory initiatives and how the elements of Canadian political economy outlined above influenced them. A summary of the following events which occurred during the Conservative era can be found in **Appendix 2: *Table 4***.

i. The Minority Liberal Government Considers Regulating Mining Companies

In 2005, when the Paul Martin Liberal government was in power, the overseas behavior of mining firms became a political concern and CSOs such as MiningWatch Canada, Kairos and the Halifax Initiative advocated for these firms to be held accountable for their actions (Ciupa & Zalik, 2020). These CSOs appeared as witnesses before the Parliamentary Standing Committee on Foreign Affairs and International Trade (SCFAIT) to provide evidence about the behaviour of Canadian mining firms abroad (SCFAIT, 2005). SCFAIT hearings culminated in June 2005, with the Committee issuing the report *Mining in Developing Countries—Corporate Social Responsibility* (SCFAIT, 2005). The report noted the adverse effects of Canadian mining activities in countries such as the Democratic Republic of the Congo, where

regulations to govern the mining sector and its impact on local residents and the environment were weak or non-existent. The SCFAIT report called for a government investigation into Canadian mining company TVI Pacific Inc. and its Mindanao mining project in the Philippines where TVI was allegedly employing paramilitary units to trample indigenous ancestral land and intimidate locals protesting the company's presence (Mining Watch, 2003; SCFAIT, 2005; Popplewell, 2009).

The Committee expressed concern that Canada did not yet have "laws to ensure that the activities of Canadian mining companies in developing countries conform to human rights standards, including the rights of workers and of indigenous peoples" (SCFAIT, 2005, p. 2). The report urged the federal government to "put in place a process involving relevant industry associations, non-governmental organizations and experts, which will lead to the strengthening of existing programs and policies in this area and, where necessary, to the establishment of new ones" (SCFAIT, 2005, p.2). It is important to note the role of parliamentary committees in providing momentum for the issue of FCA. The same will be seen in Chapter Four regarding the issue of a modern slavery law. The Liberal government's prompt response to the SCFAIT report stands in contrast to the Conservative government's delayed response to the later Advisory Group Report.

The Department of Foreign Affairs and International Trade (DFAIT), responded to this parliamentary report in October 2005 (DFAIT, 2005). As promised in the DFAIT response, the government held four *National Roundtables on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries* (the Roundtables) the following year (DFAIT, 2005; Advisory Group Report, 2007). The Roundtables were held in Vancouver, Toronto, Calgary and Montreal between June and November 2006 (Advisory Group Report, 2007). During the Roundtables there were 156 oral presentations (61 from CSOs, 33 from industry, 15 from labour organizations, 31 from academics) and 104 written submissions

(Advisory Group Report, 2007, p. i). An Advisory Group consisting of extractive industry (PDAC and MAC), civil society (MiningWatch and the Halifax Initiative), labour representatives and academics was established to report on the process and draft recommendations for adoption by the government (Advisory Group Report, 2007, pp. 61-63; Janda, 2010).

During this time in 2006 the CSOs involved in the Roundtable process formalized themselves into the Canadian Network on Corporate Accountability (CNCA). Catherine Coumans, Research Coordinator and Asia Pacific Program Coordinator at MiningWatch explained "we didn't want to be on the Government of Canada's multi-stakeholder advisory group without a really strong level of accountability to the broader civil society contingent or stakeholder group that we were supposedly representing" (C. Coumans, personal communication, January 24, 2022). She further stated that "we needed to have an organization behind us that we could report back to each step of the process and from which we could get feedback" (C. Coumans, personal communication, January 24, 2022). The formalization of the CNCA is important because, as Chapter Four will discuss, this coalition of CSOs played a key role as an anti-slavery and FCA norm intermediary in the debates regarding Canada's modern slavery law, by supporting the enactment of MHRDD legislation.

The Advisory Group's final report was submitted to the minority Conservative government in March 2007. Although more pro-business than the Liberal government, the Conservative government did not immediately reject the report. The report's central recommendation was to develop a "Canadian Corporate Social Responsibility (CSR) Framework" which included establishing an "independent ombudsman office to provide advisory services, fact finding and reporting regarding complaints with respect to the operations in developing countries of Canadian extractive companies" and "a multi-stakeholder Canadian Extractive Sector Advisory Group to advise government on the implementation and

further development of the Canadian CSR Framework" (Advisory Group Report, 2007, p. iii). The report also supported the SCFAIT 2005 Parliamentary Report's recommendation that government funding for MNCs should be conditional on them adhering to clearly defined CSR standards (SCFAIT, 2005, p. 2; Advisory Group Report, 2007, pp. 48-49).

The extractive industry initially appeared to be in favour of the Advisory Group's Report. A joint press release on March 29, 2007 containing statements from various members of the Advisory Group including Gordon Peeling, the then President and CEO of MAC was entitled, "Groundbreaking Report on Mining, Oil and Gas Companies Released: Civil Society and Industry Representatives **Agree** on Good Overseas Practices" (Halifax Initiative, 2007). Tony Andrews, Executive Director of PDAC stated that it was important that they "continually improve their performance in line with corporate social responsibility expectations" and that the report would "contribute to the development of necessary guidance and tools" to fulfil this objective (Halifax Initiative, 2007). It appeared that both industry associations and the Conservative government supported the recommendations.

By 2008, however, it was clear that industry associations were retreating from the more ambitious recommendations in the report (Janda, 2010). After Andrews endorsed the report in his "personal capacity", PDAC distanced itself from the report in a submission to the Ministers of Foreign Affairs and Trade (Keenan, 2010, p.33). PDAC's submission stated that the report "reflects an underlying bias against the Canadian mining industry" and that "the development of a CSR Framework specifically targeted at Canadian mining companies could disturb the 'level playing field' and place them at a competitive disadvantage" (Keenan, 2010, p. 33). The Canadian Chamber of Commerce (the CCC) publicly expressed its frustration with PM Stephen Harper for his "premature" statements promoting the report in July 2007 in a press release at the conclusion of the G8 summit in Germany (Berthiaume, 2007). Harper had earlier remarked that implementing the recommendations from The Roundtable process would, "place Canada

among the most active G8 countries in advancing international guidelines and principles on corporate social responsibility (CSR) in this sector" (Berthiaume, 2007). The CCC argued that some of the recommendations extended beyond the extractive sector and that the Prime Minister broke his promise to not mention them at the summit due to broader consultations being conducted (Berthiaume, 2007). It was adamant that the "voluntary nature of social responsibility must be maintained" and extractive MNCs such as Barrick and Kinross expressed concern about an independent ombudsperson scrutinizing their operations (Keenan, 2010, p. 34). Consequently the Conservative government also began distancing itself from the report (Janda, 2010).

This push back against the Advisory Group report by the mining industry actually began on March 5, 2007 with multiple closed-door meetings at the University of Toronto's Munk Centre for International Relations (Coumans, 2011). These meetings brought together Canadian mining companies such as Barrick Gold and Goldcorp, mining associations PDAC and MAC, as well as a number of Canada's larger organizations which had not participated in the Roundtables, including Plan Canada, World University Service of Canada, and Christian charity World Vision Canada which, as will be discussed in Chapter Four, was a key anti-slavery and FCA norm regulatory intermediary, supporting the passage of a transparency modern slavery law in Canada (Coumans, 2011). These meetings became known as the Devonshire Initiative (DI), named after the street address of the Munk Centre, which was financed by the founder of Barrick Gold, Peter Munk (Ciupa & Zalik, 2020). DI member Inmet Mining described the Roundtables as highlighting "the polarized and unproductive nature of the relationship between the extractive sector and a small segment of non-governmental organizations (NGOs)" (Coumans, 2011). The use of the word small was ironic considering that 61 CSOs made oral presentations during the Roundtables. Inmet further stated that the purpose of the DI was to "overcome this polarization" with new dialogue between development

NGOs and industry formulating "productive, on-the-ground solutions to issues of mutual concern" in developing countries (Coumans, 2011). The DI's light touch approach to regulation was a stark contrast to the robust government accountability mechanisms endorsed during the Roundtables. Advocates such as the CNCA felt that the Roundtable process was "thwarted and minimized" through the creation of the DI (Ciupa & Zalik, 2020, p. 828).

Any progress made regarding regulation of the mining industry under the Liberals was stalled under the Conservative Harper Government. This led parliamentarians such as Liberal MP John McKay and NDP MP Peter Julian to table Bills C-300 and C-354 respectively.

ii. Legislative Proposals by Parliamentarians: Bills C-300 and C-354

Industry backlash against the Advisory Group's report led to a two-year delay in the Harper Government providing a response to the recommendations. CSOs and opposition parties became increasingly frustrated with the lengthy delay and consequently, on February 9, 2009, Bill C-300 was introduced into the House of Commons by Liberal MP John McKay, one month before the Conservative government's official response (Janda, 2010; Keenan, 2010; Marques, 2016). Bill C-300, *An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries,* sought to codify many of the Advisory Group's Report's key recommendations. The Bill included human rights protection, provided a complaints mechanism that could be accessed by victimized communities outside of Canada and a potential sanction for non-compliance with stipulated CSR standards. These sanctions included withdrawal of government funding and political support, as supporters of the SCFAIT 2005 report envisioned (MiningWatch, 2011). The stated purpose of the Act was to "ensure that corporations engaged in mining, oil or gas activities and receiving support from the Government of Canada act in a manner consistent with international environmental best

practices and with Canada's commitments to international human rights standards" (Bill C-300, p. 2).

To prompt MNCs to act in such a responsible manner, Bill C-300 proposed to regulate government agencies including EDC, DFAIT and the Canadian Pension Plan (CPP), which support the activities of mining companies abroad (Bill C-300, 2009; Marques, 2016). The bill empowered the Minsters of Foreign Affairs and International Trade (the Ministers) to issue corporate accountability standards for extractive companies which seek financial support from these government agencies (Bill C-300, p. 4). Adhering to the standards would be a condition of continued support. The Ministers would receive complaints and investigate corporate compliance with the established standards. There was no requirement that the company being investigated grant its consent to the investigation (Keenan, 2010, p. 34).

As a private member's bill, Bill C-300 could not implement the Advisory Group Report's recommendation of an ombudsman office. This is due to such an office requiring expenditure of public funds. Bills with such a requirement must be accompanied by a royal recommendation which can only be secured by the government and introduced by a Minister (O'Brien & Bosc, 2009). Despite the Bill's inability to create the much needed ombudsman office, the CNCA strongly supported Bill C-300. Catherine Coumans explained that the support stemmed from the fact that the bill "captured some key elements that we are concerned about, which are corporate accountability and mandatory or legal measures" which had been the goal since the 2005 SCFAIT Report (C. Coumans, personal communication, January 24, 2022).

Addressing the mounting allegations of human rights violations by Canadian mining companies abroad, MP John McKay stated, "Not only is there a behavioural risk to an individual company, but there is also a risk to our national reputation" (Popplewell, 2009). Proponents of the bill believed that Bill C-300 would have demonstrated that Canada is a leader where respect for human rights is concerned and would have greatly restored Canada's

tarnished reputation overseas (Neve, 2010). However, as MP John McKay stated, "the mining companies mounted a furious lobby" against it (J. McKay, personal communication, January 18, 2022).

Industry lobby against the bill commenced in earnest after Bill C-300 passed its second reading on April 22, 2009 (MiningWatch, 2010(a)). PDAC and MAC's arguments against the bill included that it would prompt capital flight from Canada, put Canadian companies at a competitive disadvantage, contained extra-territorial application of Canadian law which was illegitimate, would create too much administrative overreach and tarnish the reputation of Canadian mining companies as good corporate citizens (Janda, 2010). Critics further claimed the bill would force extractive companies to incur major expense in attempts to defend sensational and unfounded accusations, which would be extremely challenging to investigate in foreign developing countries (French, 2009; Beatty et al., 2010). Gordon Peeling of MAC commented that the issue with Bill C-300 was that it was a "very quick on/off switch...you're in compliance or you're out of compliance. There are automatic consequences that take no account about whether you're willing and working towards better outcomes" (French, 2009). Perrin Beatty, President and CEO of the Canadian Chamber of Commerce claimed that the bill was "a poorly constructed piece of legislation" and that it would "cause more harm than it intends while leaving developing countries no better, and potentially worse off as Canadian companies are driven out and replaced by companies with little concern for workers' rights or the environment" (Beatty et al., 2010).

Hearings before the SCFAIT began in October 2009 and ran until June of 2010 (MiningWatch, 2010(a)). Hearing witnesses who supported the bill included various legal experts and CSOs such as CNCA members. The committee also heard from Former Secretary of Environment of Argentina, Romina Picotti, who testified about Barrick Gold threatening her and her staff while she carried out ministerial duties (House of Commons, 2009(a)). Rape,

murder and other human rights and environmental violations allegedly perpetrated by Barrick and other companies including Goldcorp and HudBay in countries such as Argentina, Honduras and Guatemala were also recounted (House of Commons, 2009 (a), House of Commons, 2009 (b)).

Those opposed to the bill also appeared as witnesses, including government agency EDC, which the bill sought to regulate. Jim McArdle, Senior Vice-President, Legal Services and Secretary of EDC testified that although the EDC supported the intent of Bill C-300, EDC believed that the best way to improve corporate responsibility was to improve environmental conditions related to projects around the world by working with companies to build their capacity in a responsible manner (House of Commons, 2009(b)). Conservative MP Deepak Obhrai questioned why Canadian companies should be forced to meet higher standards when China was expanding its mining operations without such hindrances. He commented, "We all know what China is doing. China is all over Africa. Who's asking China to have corporate social responsibility? Nobody, as you all pointed out" (House of Commons, 2009(c); Whittington, 2009). Opposition to the bill continued even outside formal SCFAIT hearings.

In the spring of 2010 at the PDAC international annual mining Convention in Toronto, PDAC protested the bill by handing out anti Bill C-300 buttons along with putting up similar posters and bill boards. PDAC also hosted a press conference and launched a website encouraging its members to write to Ottawa to protest the Bill (MiningWatch, 2010(a)). John McKay noted that Conservatives had vowed to kill the bill and that some Liberals were weary of being connected to a bill opposed by some of the wealthiest companies in Canada. He commented that, 'the mining industry in Canada is too powerful a lobby" (Popplewell, 2009). McKay also stated that he had to be "extremely careful because the mining companies have made it very plain to me that, 'we will sue your ass off if, in fact, you make any allegation of our companies and cause reputational damage" (Popplewell, 2009). He further noted "if they

think they can treat a Canadian MP this way, you can imagine what they say about Third World countries where they can walk in and say, 'How much to buy you?'" (Popplewell, 2009). As the final vote approached mining companies including Barrick Gold, Kinross and Golcorp registered lobbyists to lobby on Bill C-300. Barrick Gold registered seven lobbyists and met with approximately 22 MPs and 3 Senators (MiningWatch, 2010(a)). MAC lobbied at least 29 MPs and PDAC at least 7 (Mining Watch, 2010).

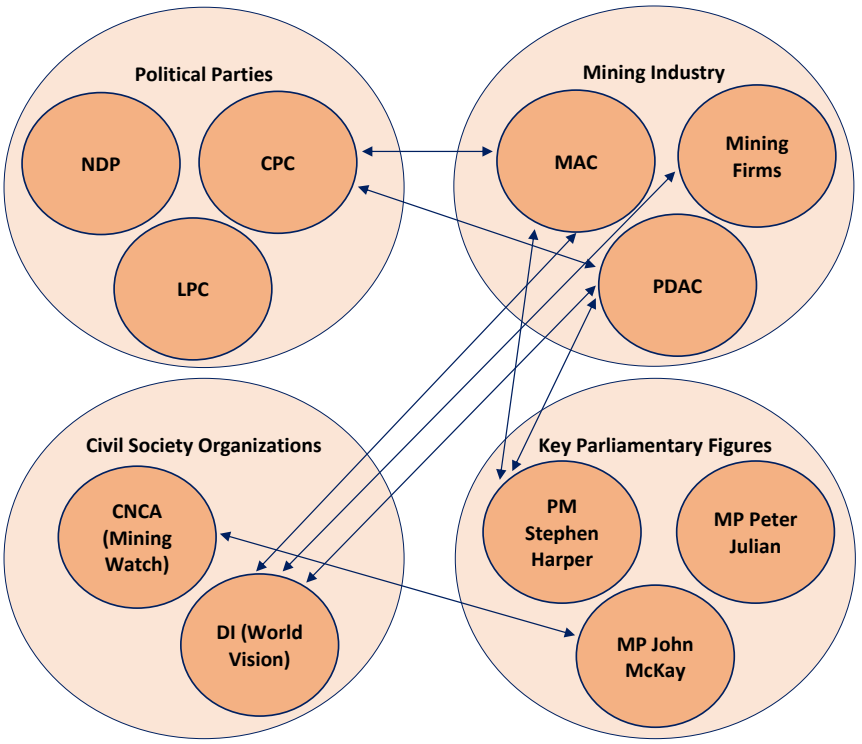
Despite the strong opposition to the bill, McKay believed that those supporting the bill had done enough lobbying for it to pass. He explained that the bill's supporters had counted the numbers quite carefully and done a lot of lobbying themselves. He was "pretty confident going into the vote that we had won. Then we could push the bill on to the Senate. Well don't count your chickens before they hatch" (J. McKay, personal communication, January 18, 2022).

On October 27, 2010 Bill C-300 was narrowly defeated at the report stage in the House of Commons by a vote of 140-134, losing by 6 votes (MiningWatch, 2010(a)); Whittington, 2009). The ruling Conservatives had whipped their MPs to vote against the bill. The NDP and Bloc Québécois supported the bill, with only 4 NDP and 6 Bloc Québécois MPs not voting. However, a significant 13 Liberal MPs out of 76, including party leader Michael Ignatieff who had expressed concerns about unspecified aspects of the proposed legislation, did not show up for the vote. John McKay believed, and indeed it was a fact, that the Liberals could have put his bill over the top if more of his colleagues had supported him in the House (Whittington, 2009). However, unlike the Conservatives who had been whipped to vote no, the Liberals had followed the traditional practice of permitting MPs to vote on a private member's bill without party discipline (Whittington, 2009).

The Harper government had made it clear that they supported continued voluntary self-regulation for mining companies. Although Bill C-300 appeared to be a failure, it became a

significant landmark in Canada's journey to a modern slavery act due to the intense debate it generated around the need for increased corporate accountability. It also demonstrates some important domestic dynamics at play between political parties, the mining industry, CSOs and key parliamentary figures, as illustrated in ***Figure 3***, which ultimately impacted the stringency of Canada's modern slavery act.

Figure 3 - Domestic Actors and Their Connections from 2006-2015



The arrow connections illustrate PDAC and MAC's lobbying power and influence on the Conservative government, and the Conservative government and PM Stephen Harper's support for the mining industry. It shows the links between the mining industry and the Devonshire Initiative which includes PDAC, MAC, and civil society organizations such as World Vision Canada. The figure also shows the CNCA, which includes organizations such as MiningWatch, supporting Liberal MP John McKay's Bill C-300 in opposition to the activities of mining companies abroad.

Two months after Bill C-300 was introduced into parliament, on April 1, 2009, NDP MP Peter Julian tabled Private Member's Bill C-354 *An Act to amend the Federal Courts Act (international promotion and protection of human rights)* in the House of Commons, which was inspired by the USA's Alien Tort Statute and proposed that non-Canadian plaintiffs should have access to Canadian courts in the event of violations of international law by Canadian

MNCs abroad (Mijares Peña, 2014). The bill did not reach a second reading, and was reintroduced in 2011 as Bill C-323. However, once again the bill did not receive a second reading.

MP Peter Julian, like MP John McKay, had a history of legislative attempts aimed at increasing foreign corporate accountability. As we will see in Chapter Four will discuss, both acted as regulatory intermediaries regarding anti-slavery and FCA norms, with MP John McKay supporting transparency legislation and MP Peter Julian supporting MHRDD legislation. Between the tabling of Bill C-300 and C-354 in 2009, however, the Harper government eventually responded to the Advisory Group's report by establishing an Extractive Sector CSR Counsellor.

iii. The Extractive Sector CSR Counsellor

In March 2009, the Harper government finally issued an official response to the Advisory Group's 2007 report in the form of a CSR policy, *Building the Canadian Advantage: A CSR Strategy for the International Extractive Sector* (Global Affairs Canada, 2009; Marques, 2016). This policy promoted voluntary guidelines for extractive companies including the *OECD Guidelines for Multinational Enterprises*, the International Finance Corporation's *Performance Standards*, the *Voluntary Principles on Security and Human Rights*, and the *Global Reporting Initiative for CSR* (Global Affairs Canada, 2009; MiningWatch, 2010(b)).

As a part of this strategy and as a clear counterpoint to Bill C-300, an order-in-council on March 25, 2009 established the Extractive Sector CSR Counsellor. The Counsellor's mandate was to review the corporate social responsibility practices of companies operating outside Canada and advise stakeholders on implementation of the aforementioned performance guidelines (Global Affairs Canada, 2009). However, the CSR Counsellor's office could not

create new performance guidelines, had no ability to recommend sanctions for companies not in compliance with the voluntary guidelines and contained no mechanism by which political and financial support from the government was conditional on extractive companies adhering to international human rights and environmental standards (MiningWatch, 2010(b)). Additionally, the Counsellor could only investigate a compliant if the accused company agreed to cooperate.

In contrast to Bill C-300 and Advisory Group's 2007 recommendation for an ombudsman, the Counsellor was given a very modest mandate where there were no formal consequences for violations of voluntary guidelines and only advice for stakeholders (Janda, 2010). International Trade Minister Stockwell Day, who announced this CSR initiative, was adamant that legislation such as Bill C-300 would not work and that companies did not need it (Popplewell, 2009). He commented that Canadian extractive companies did high quality work and respected host governments communities (Popplewell, 2009).

The mining sector believed that Parliament should give this CSR strategy time to work and be evaluated before replacing it with another framework (Beatty et al., 2010). CNCA members however deemed the CSR Counsellor to be a toothless figure. Catherine Coumans commented that "the industry was saying 'look the government created a CSR Counsellor, we don't need this Bill C-300'" (C. Coumans, personal communication, January 24, 2022). She further stated that after Bill C-300 was defeated "the CNCA focused its attention on the CSR Counsellor and how weak the mandate was, how it was ineffective, and we started basically critiquing the CSR counsellor and pushing for a more effective ombudsperson" (C. Coumans, personal communication, January 24, 2022). The CNCA also took issue with the identity of the first Counsellor.

There was push back against Minister Day's appointment of Marketa Evans on October 2, 2009 as the first Extractive Sector CSR Counsellor in light of her affiliation with the mining

sector. Not only was the Counsellor not independent as she had to answer to the Minister of Trade, who at the time was Minister Day (MiningWatch, 2010(b)), Marketa Evans was the founding director of the Munk Centre and the initial organizer of the DI (Popplewell, 2009; Ciupa & Zalik, 2020). When questioned about investigating companies who refused to give consent, Evans commented that her hypothesis was that companies would want to participate in a review, which didn't ease speculation that she was too close to the extractive industry and complicit with their agenda (Popplewell, 2009). The office received six complaints during Evans' tenure and five were closed with no resolution (Ciupa & Zalik, 2020). Furthermore, from 2011 the CSR Counsellor overlapped with Canada's OECD National Contact Point which also accepted complaints about Canadian extractive companies and was similarly critiqued for being a weak office (Ciupa & Zalik, 2020).

In addition to the Extractive Sector CSR Counsellor's Office, as part of its *CSR Strategy for the International Extractive Sector*, the Harper government began funding CSOs to implement CSR in collaboration with mining companies operating abroad. The three mining partnership pilot projects included a Plan Canada and Iamgold project in Burkina Faso, a World University Service of Canada and Rio Tinto project in Ghana, and a World Vision and Barrick Gold project in Peru (Oved, 2014 (a), (b), (c)). Notably, the NGOs involved in these project all hailed from the DI and not the CNCA, which was firmly opposed to the government's CSR Strategy. These purpose of these projects was to assist with the overall development of mining towns including for instance building infrastructure such as hospitals and schools and providing entrepreneurial workshops which would ease the dependence of locals on the mines and the temporary jobs they provided (Oved, 2014(c)).

While some locations directly associated with the projects benefitted from them, there were concerns about uneven development as areas outside of the mine's vicinity remained underdeveloped. Although the Harper government stressed that this was a "win-win" for both

Canada and developing countries, the OECD cautioned Canada that "there should be no confusion between development objectives and the promotion of commercial interests" (Oved, 2014(a)). These projects were viewed as less about development and more about negotiating for access to land in the Global South (Oved, 2014(c)). Although more tools to increase corporate accountability were being added to Canada's regulatory toolbox, they were ineffective. Amidst this background Liberal MP John McKay tabled another bill in parliament aimed at regulating the mining industry.

iv. Bill C-474

Bill C-474 entitled *Transparency of Payments Made by Mining, Oil and Gas Corporations to Foreign Governments Act* was tabled by MP John McKay on February 26, 2013 in the House of Commons. MP McKay modelled this Bill, dubbed the "Sunshine Bill" after the provisions of section 1504 of the 2010 Dodd-Frank Act, which requires American companies to disclose payments made to a foreign government for extractive development activities. Similarly, Bill C-474 aimed to promote financial transparency, accountability and long-term economic sustainability through public disclosure of payments made by mining, oil and gas companies to foreign governments. Unsurprisingly, the Conservatives opposed the bill and, as with Bill C-300, MP McKay expected this bill to also be defeated. He stated that "it will have a glorious death" referring to the fact that private member's bills are rarely passed, even less so if they are tabled by opposition members in a majority government, which the Conservatives had secured in the 2011 federal election (Do, 2014). However MP McKay also hoped that "a miracle could occur" (Do, 2014). The Bill was defeated in its second reading on April 9, 2014. John McKay commented that "it was terminated with extreme prejudice by the Harper government" (J. McKay, personal communication, January 18, 2022). However, this was not the end of Bill C-474.

In 2013, the Harper government announced that it would be implementing a mandatory reporting regime for Canadian extractive companies. This was due to the international pressure of the USA, UK, France and European Union (EU) all passing transparency laws to meet the Extractive Industries Transparency Initiative (EITI) requirements (Johnston, 2013). The EITI is an international regime designed to promote transparency and good governance in dealings between corporations and developing nations rich in resources. Canada was, as MP John McKay stated "the big hole in the international fence" regarding the enactment of a reporting regime (Do, 2014). President Barack Obama was particularly keen on implementing the EITI, with the Securities and Exchange Commission forbidding companies listed on American stock exchanges (which included some Canadian mining companies) from conducting business in countries where publication of payments is illegal (Johnston, 2013).

This decision to enact legislation mandating companies to report their payments was made easier for the Harper government due to PDAC's and MAC's full support for a transparency regime. The Conservative government subsequently included Bill C-474 in their Omnibus Bill C-43, 2014 (Ciupa & Zalik, 2020). MP John McKay stated that he was surprised but pleased by this development. He stated "So there we have it, there's legislation. You didn't get it through the front door you got it through the back door" (J. McKay, personal communication, January 18, 2022). MP McKay's willingness to seek out every avenue for possible advancement of legislation is a trait which will become even more apparent in the events leading to the passage of Canada's modern slavery act. The Harper Government would go on to introduce this bill into parliament as the ESTMA 2014.

v. The Extractive Sector Transparency Measures Act 2014

The *Extractive Sector Transparency Measures Act* (ESTMA) was passed on December 10, 2014 and came into force on June 1, 2015, four months before the Liberals, led by PM

Justin Trudeau, won a majority government in parliament. ESTMA imposes mandatory reporting of payments made by Canadian businesses in extractive industries, that is, mining, oil and gas, to domestic (including Aboriginal entities) and foreign governments. It applies to business on the Canadian stock exchange, doing business in Canada and meeting two out of the three following criteria: (i) it has at least $20 million in assets; (ii) it has generated at least $40 million in revenue; and (iii) it employs an average of at least 250 employees. The Act's stated purpose is to deter and detect corruption. The penalty for failure to comply with the Act's reporting requirements is a fine of not more than $250,000 (ESTMA, 2014). The Act fulfilled the Harper government's commitment to implement the EITI in Canada and made Canada compliant with the Dodd-Frank Act 2010 and the EU Transparency Directive 2004 (modified in 2013) (Ciupa & Zalik, 2020). ESTMA, however, has been criticised for its role in "legitimating and offering security for industry, rather than substantively reforming its activities" (Ciupa & Zalik, 2020, p. 828).

Ciupa and Zalik note that while ESTMA mandates firms to report, there is very little or no oversight by the designated Canadian government bodies responsible for the data collection, that is the Minister of Natural Resources Canada (2020, p. 829; Government of Canada, 2016). This facilitates the practice of corporate exclusions meaning that some information may remain hidden or confidential. They also identify the limited or lack of standardization of the annual reports produced by firms as a problem as it makes comparing the various types of payments by companies difficult (2020, p. 829). Ciupa and Zalik also make the crucial point that the ESTMA does not address "the underlying concerns regarding social violations and wealth extraction that prompted industrial regulatory initiatives" (2000, p. 829). Instead these "profit-driven, rights-violating, and environmentally harmful extraction" practices are funneled into voluntary codes of conduct and transparency regulations for the extractive industry thereby protecting the interests of extractive sector (2000, p. 829). The lack of systemized reporting

also makes it difficult for CSOs to monitor reports and hold governments accountable based on the information companies disclose (Ciupa & Zalik, 2020). As we shall see in Chapter Four, Canada's modern slavery act was modelled very closely after ESTMA and suffers many similar flaws.

The Conservative Harper government used voluntary, corporate self-regulation to regulate the activities of Canadian MNCs abroad. More robust legislation, such as Bill C-300, was shut down in favour of the weak office of the Extractive Sector CSR Counsellor and transparency laws such as ESTMA 2014. These light-touch regulatory mechanisms failed to hold MNCs accountable for their actions abroad.

Conclusion

This Chapter addressed research question two by discussing the key features of Canada's domestic political economy and how they shaped initiatives implemented to regulate MNCs from 2006 to 2015. These crucial features, which will recur in Chapter Four's discussion of Canada's modern slavery law, include Canada's cultural and political ties to the Anglosphere, its trade relationship with the USA, its powerful mining industry and the CSOs opposing the activities of the mining industry. The Chapter also explored the mining industry's resistance to regulation of MNCs activities abroad. The reluctance of the Conservative government to enact robust legislation to regulate the industry, in contrast to the former Liberal government's facilitation of the Roundtables in response to the SCFAIT parliamentary report, led to parliamentarians such as MP John McKay and MP Peter Julian tabling Bills C-300 and C-345. Despite their failure, these bills highlighted the role of these key parliamentarians in advocating for foreign corporate accountability and eventually modern slavery legislation. Civil society groups such as the CNCA supporting the Roundtable recommendations while other organizations such as World Vision collaborating with the mining industry is an

important dynamic which carries forward into the debate over the stringency of Canada's modern slavery law. Light-touch, transparency regimes with a lack of sanctions and enforcement such as ESTMA 2014, were endorsed by the Conservatives as opposed to anything more stringent. From 2006 to 2015 therefore, the Conservative government and powerful mining lobby prevented any effective regulation of the activities of MNCs abroad despite the best efforts of civil society. Canada's maintenance of the status quo with voluntary, self-regulation of MNCs also begins to answer research question three by situating Canada on the less stringent end of the regulatory continuum.

The incoming Liberal majority government would use the frustration of CSOs like the CNCA, which was seeking more effective corporate accountability mechanisms, to their advantage to gain support by promising an ombudsperson with a stronger mandate than the existing Extractive Sector CSR Counsellor. Chapter Four will evaluate the Liberal Era from 2015 to present (2023) to assess how the domestic factors outlined in this Chapter, as well as the added pressure of international factors, influenced the enactment of transparency modern slavery legislation in Canada.

Chapter 4

International Pressure to Enact Modern Slavery Legislation: The Liberal Era 2015 to 2023

> I want a bill that gets through the Senate and House…if I start layering human rights onto this kind of a bill…all the support we have in the industry will just evaporate and I daresay all the support we have in government will evaporate as well.
>
> —The Honourable John McKay, MP, *personal communication*, *2022*

Introduction

October 19, 2015 heralded a new age for Canada as the Liberals led by Justin Trudeau prevailed in the federal election, defeating the Conservative government led by Harper, which had been in power for the previous nine years. The Liberals were catapulted into a majority government by characterizing themselves as being "quintessentially opposite" of the Harper Conservative government (Doern and Stoney, 2016, p. 1). In contrast to the Harper government's focus on the extractive sector with little regard for human or environmental rights, the Trudeau Liberals presented themselves as a more cosmopolitan government able to balance human rights with its support of the extractive industry (Doern and Stoney, 2016; Tolksdorf & Kuenning, 2019).

As discussed in Chapter Three, the Conservatives strongly supported voluntary, self-regulation of business, particularly the mining industry, evident in the enactment of light-touch legislation such as Extractive Sector Transparency Measures Act (ESTMA) 2014 and the implementation of the weak Extractive Sector Corporate Social Responsibility (CSR) Counsellor. In contrast, the Liberals had secured the support of Canadian civil society with the election campaign promise to replace the Extractive Sector CSR Counsellor with the Canadian Ombudsperson for Responsible Enterprise (CORE) (Keenan, 2020; Johnston & Bittle, 2023).

The Liberals promised that CORE would have investigatory powers to hold Canadian multinational corporations (MNCs) accountable for their disregard of human and environmental rights abroad. There was therefore anticipation of a shift from voluntary, soft law regulation to mandatory, state-based, hard law mechanisms to increase foreign corporate accountability (FCA) during the Liberal era.

While making domestic promises to strengthen regulation of MNCs, the Liberal government simultaneously faced international pressure to increase FCA by tackling the issue of modern slavery and forced labour in supply chains. This pressure stemmed from various sources including the wave of modern slavery laws being passed in various key states comprising the global anti-slavery network such as California in the United States of America (USA), the United Kingdom (UK), Australia, France and several European countries. International pressure led to the narrative that Canada was falling behind the rest of the network and specifically its Anglo allies with regards to passing legislation. International commitments such as eliminating forced labour by 2030 as part of target 8.7 of the Sustainable Development Goals (SDGs) also served as a source of pressure, as did a parliamentary study, initiated by World Vision Canada, which culminated in a 2018 report where several influential, international, Anglo organizations encouraged the government to adopt modern slavery legislation in Canada.

Despite this pressure, modern slavery legislation was not an immediate priority for the Liberal government. Progress on the legislative front was stalled by the Liberals' loss of a majority government in the 2019 federal election and the Covid-19 pandemic, which diverted all resources and delayed parliamentary proceedings. The government did respond to the pressure to increase FCA however, with attempts to shift from soft law to hard law mechanisms when regulating MNCs. It did so by implementing CORE and a forced labour import ban which was influenced by trade relations with the USA, as it was a requirement of the Canada-USA-

Mexico Agreement (CUSMA). Although these were hard law mechanisms in the sense that they are state based, they are not very effective. Additionally the case of *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 highlighted the use of transnational litigation as a traditional hard law mechanism through which access to justice against MNCs could be sought. Again however, its effectiveness is reduced by its lengthy and expensive process.

The Liberal government's shift from soft to hard law continued with the enactment of transparency modern slavery legislation in 2023, namely, Bill S-211 tabled by Senator Julie Miville-Dechêne in partnership with Member of Parliament (MP) John McKay. International pressure resulting from media attention surrounding goods made with forced labour in China and Malaysia during the pandemic entering Canada through supply chains galvanized the Liberal government to make legislation a priority after its commitment to protecting human rights came into question. The transparency act was strongly opposed by the Canadian Network on Corporate Accountability (CNCA) and New Democratic Party (NDP) MPs Peter Julian and Heather McPherson for its light-touch nature. Although hard law, it was considered weak in comparison to mandatory human rights due diligence legislation (MHRDD). Bill S-211 however had the support of the Liberals and Conservatives which was enough for it to be passed. It also had the support of the mining industry and other business associations which also contributed to its enactment. Although the Liberal government appeared to be making the shift from voluntary, soft law to mandatory, hard law regulation of MNCs, the light-touch and often ineffective nature of the mechanisms implemented made the Liberal era very similar to the Conservative era.

This Chapter, therefore, answers research question two — "what factors influenced the introduction of modern slavery transparency legislation into the Canadian parliament to combat forced labour in supply chains?" — and begins to answer research question three: "where is Canada situated in the landscape of emerging regulatory techniques to combat forced labour in

supply chains?" It is divided into three sections. The first section sets out the sources of international pressure on the Liberal government to address modern slavery in global supply chains, including international obligations and the perception that Canada was falling behind its international cohorts when it came to passing modern slavery legislation. The second section looks at how the Liberal Government responded to the pressure to address modern slavery, which included implementing hard law mechanisms such as CORE and a forced labour import ban. Finally, the third section discusses the events surrounding the passage of transparency modern slavery legislation in 2023. I will then conclude the Chapter by outlining the themes which emerged and highlighting the similarity of the Liberal and Conservative eras. A summary of the following events which occurred during the Liberal era can be found in **Appendix 3:** ***Table 5***.

I. International Pressure on the Liberal Government to Address Modern Slavery in Global Supply Chains

The Trudeau Liberal majority government came into power in 2015 seeking to distinguish itself from the former Harper Conservative government. It did this by emphasizing its intent to balance economic interests with the protection of human rights (Doern and Stoney, 2016; Tolksdorf & Kuenning, 2019). Significant international developments in the area of modern slavery would test this tenuous balance by placing pressure on the incoming Liberal government to address the prevalence of forced labour in the supply chains of Canadian MNCs. These developments included the enactment of modern slavery laws in countries closely allied with Canada, Canada's international commitments pertaining to eliminating modern slavery, the participation of influential, international Anglo non-governmental organizations (NGOs) in Canada's parliamentary study on enacting a modern slavery law and the first introduction of proposed modern slavery legislation into the Canadian parliament by Liberal MP John McKay.

i. Proliferation of Modern Slavery Laws, International Commitments and the Anglo Sphere of Influence

As the Liberal government took office, the wave of modern slavery laws being passed in the Global North put pressure on Canada to follow suit. These laws were triggered by the 2013 collapse of Rana Plaza in Bangladesh which killed over one thousand garment factory workers. As explained in Chapter One, the fact that these garment factories had been audited and certified by Bureau Veritas highlighted the failure of CSR and the need for stronger regulation of MNCs. Legislation which emerged in home states included the UK Modern Slavery Act (MSA) 2015, which was inspired by the California Transparency in Supply Chains Act 2010, the French Corporate Duty of Vigilance Law 2017, and the Australian MSA 2018. As noted in Chapter Two, the Rana Plaza tragedy provided momentum for parliamentarians and civil society organizations (CSOs) in the UK, France and Germany advocating for a modern slavery law, as brands from these countries were among those implicated in sourcing from these factories (Berman, 2016; Evans, 2020; Weihrauch et al., 2023). The effects of Rana Plaza also rippled through Canada not only due to the high profile class action lawsuit against Loblaws, whose clothing brand Joe Fresh sourced from Rana Plaza's factories, but also through the involvement of Canadian CSOs in factory remediation efforts. Toronto based Maquila Solidarity Network (MSN), for instance, served as a witness signatory to the Accord on Fire and Building Safety which set out the terms under which brands were to ensure remediation of Bangladeshi factories.

Canadian CSOs also used Rana Plaza to demonstrate the importance of modern slavery legislation. World Vision in particular used the reputational damage suffered by companies after Rana Plaza to illustrate the benefits of a law requiring companies to frequently monitor and report on their supply chains (World Vision Canada, 2015). Transparency legislation being enacted in Anglo states served as the faith-based charity's inspiration. President and Chief

Executive Officer (CEO) of World Vision Canada Michael Messenger stated "we were familiar with modern slavery legislation in the UK, the California legislation had just come into force and we were inspired by that" (M. Messenger, personal communication, November 02, 2021). Consequently, he explained, World Vision began their "long, slow but steady emphasis on advocacy around supply chain legislation", exemplifying their role as regulatory intermediaries regarding anti-slavery and FCA norms (M. Messenger, personal communication, November 02, 2021). The influence of the Anglosphere's early affinity for transparency modern slavery laws was therefore evident in Canada, as was the crucial role of CSOs, particularly World Vision, in consistently advocating to the Liberal government to pass legislation similar to the California and UK acts in Canada.

Canada's international commitments pertaining to modern slavery, including joint commitments with its Anglo allies, also served as a source of pressure. The United Nations' (UN) adoption of the Sustainable Develop Goals (SDGs) on September 25, 2015 added to the pressure on the Canadian government. SDG target 8.7 seeks to have all member states, including Canada, take immediate and effective measures to eradicate forced and child labour. In response to target 8.7 a global multi-stakeholder initiative (MSI) called Alliance 8.7 was launched on September 21, 2016 under the purview of the International Labour Organization (ILO) (Alliance 8.7, 2023). The Alliance is comprised of states including Canada, academic institutions, international organizations such as the UN, ILO, Organisation for Economic Co-operation and Development (OECD) and International Organization for Migration (IOM), as well as CSOs including Anti-Slavery International, World Vision, Unseen UK and the Walk Free Foundation.

Senior Child Labour Specialist at the ILO Benjamin Smith noted that Alliance 8.7 with its hundreds of participating organizations is an important forum for partners to "coordinate on events, on publications, on advocacy and exchange of experience" (personal communication,

January 10, 2022). He also noted Canada's participation in the Action Group on Supply Chains under the Alliance (B. Smith, personal communication, January 10, 2022). Alliance 8.7 represented the formalization of the epistemic global anti-slavery network responsible for the dissemination of anti-slavery and FCA norms, including the enactment of modern slavery legislation, across states. However, members of the network are not unanimous in their views on legislation; the Anglo countries tend to enact transparency laws, whereas the European countries adopt more stringent MHRDD laws. As this Chapter will show, Canada, specifically the Liberal government, is very much aligned with the Anglo faction of the network.

In line with achieving SDG target 8.7 Canada and other Group of Twenty (G20) countries, at the G20 May 2017 Labour and Employment Ministers Meeting, committed to working to develop policy frameworks aimed at promoting decent work and sustainable global supply chains free from slavery (German Federal Ministry of Labour and Social Affairs, 2017). In support of this undertaking, UK Prime Minster Theresa May issued *A Call to Action to End Forced Labour, Modern Slavery and Human Trafficking* on September 19, 2017 at the 72nd Meeting of the UN General Assembly (UK Department for International Development, 2017). The call urged governments to work with business to clean up supply chains, address government procurement practices and build a culture of consumer awareness to promote decent work, which are similar tenets to the UK's MSA. As discussed in Chapter Two, states can act as regulatory intermediaries by encouraging other states to adopt modern slavery legislation (Gustafsson et al., 2023(a)). This is an example of a top-top approach where global norm diffusion occurs via social leaning where political elites adopt regulatory strategies from each other (Gustafsson et al., 2023(a)). However, as this Chapter will show, a bottom up approach whereby civil society aligned with key parliamentarians to pressure the government to adopt legislation was more prevalent in Canada.

The Anglosphere's intelligence alliance the Five Eyes, comprised of the USA, UK, Canada, Australia and New Zealand, endorsed Prime Minister Theresa May's call and formed a taskforce in 2018 where strategies to tackle modern slavery included the promotion of transparency in global supply chains (U.S. Department of Homeland Security, 2018). In September 2018 the Five Eyes also launched Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains (U.S. Department of State, 2018). These principles encouraged governments to adopt due diligence processes in their procurement supply chains, encourage businesses to do the same and align or harmonize existing and proposed laws with other governments. Canada also ratified the *ILO Protocol of 2014 to the Forced Labour Convention*, 1930 (No. 29) on June 17, 2019 (ILO, 2014). This commitment requires member states to take appropriate steps to prevent forced labour and guarantee that victims have access to effective remedies and compensation.

Thus the Liberal government came into power at a time when there was a major uptick in activity by the global anti-slavery network, most significantly the passage of various modern slavery laws. This, along with its international commitments, particularly those made jointly with its Anglo allies, would have put pressure on the government to address the issue of modern slavery in supply chains. It was World Vision Canada, however, which took the first steps to initiate discussions about enactment of modern slavery legislation in the Canadian parliament. World Vision's persistence would lead to a 2017 Canadian parliamentary study on child labour and modern slavery in global supply chains.

ii. Canadian Modern Slavery Parliamentary Study and A Call to Action

Canada's parliamentary study on child labour and modern slavery occurred during November and December 2017. Showing how World Vision acted as a key regulatory intermediary, former Senior Policy Adviser of Child Rights and Protection at World Vision,

Simon Lewchuk, stated that around 2016 World Vision "started engaging with different members of the relevant parliamentary committees" with hopes to "force the government's hands" into taking action on the issue (S. Lewchuk, personal communication, November 19, 2021). Head of Policy at World Vision, Martin Fischer explained that they worked closely with Liberal MP Robert Nault, Chair of the Standing Committee on Foreign Affairs and International Development, who was very receptive to the idea of a modern slavery study (M. Fischer, personal communication, November 03, 2021). MP Nault suggested having the Subcommittee on International Human Rights conduct the study due to the Committee on Foreign Affairs' full agenda. By the time the study was conducted in 2017 it was headed by the new Committee on Foreign Affairs Chair Liberal MP Michael Levitt (M. Fischer, personal communication, November 03, 2021).

In addition to other interested groups, World Vision requested to be formally invited as a witness to share their views on the topic (S. Lewchuk, personal communication, November 19, 2021). Witnesses in the study included Canadian government departments such as Employment and Social Development Canada (ESDC), international organizations such as the ILO and Unicef Canada, domestic organizations such as the Canadian Labour Congress (CLC), and predominantly Anglo international CSOs such as Anti-Slavery International, the Ethical Trading Initiative (ETI), the Freedom Fund, Unseen UK and the Walk Free Foundation (House of Commons, 2018, pp. 47-49). The international CSOs which participated, majority Alliance 8.7 members and supporters, are headquartered in the USA, UK and Australia where the modern day abolitionist movement is concentrated (LeBaron & Rühmkorf, 2019). Background context on some of these key organizations shaping global modern slavery policy is necessary to understand the views they expressed at Canada's parliamentary study.

The Walk Free Foundation was created by Australian mining magnate and philanthrocapitalist Andrew Forrest and his wife Nicola Forrest to eradicate modern slavery.

This organization has positioned itself as the leading expert on modern slavery by imposing business management models to quantify the issue and create benchmark figures against which progress of global efforts to achieve target 8.7 can be tracked (Fudge, 2022). Walk Free's Global Slavery Index and Global Estimates of Modern Slavery, jointly developed with the ILO and IOM, are examples of benchmarking. As explained in Chapter One, benchmarking is a neoliberal tool used by non-state institutions like Walk Free which govern at a distance, universalizing anti-slavery and FCA norms by translating them into numerical representations (Larner & Le Heron, 2006; Broome & Quirk, 2015). Instead of criticizing business models where lead firms place downward pressure on suppliers, Walk Free attributes modern slavery in supply chains to the governance gap, that is, market failure caused by the limited jurisdiction of home states to govern beyond national borders. Consequently, Walk Free promotes market-based solutions such as modern slavery laws, where authority is delegated to MNCs, to enforce international labour standards in host states via their transnational supply chains (Fudge, 2022). Whether these laws effectively fill the governance gap is discussed in Chapter Five. However, Walk Free's presence at Canada's parliamentary study is significant considering modern slavery laws were being discussed as a solution.

Other notable international CSOs were Unseen UK and the ETI, both of which were influential in section 54's inclusion in the UK MSA 2015. Andrew Wallis OBE, founder and CEO of modern slavery charity Unseen UK, chaired the Centre for Social Justice's report "It Happens Here" which is widely acknowledged as leading to the passage of the UK's MSA (The Centre for Social Justice, 2013). He explained that a key recommendation in that report was "transparency in supply chains" inspired by "the work that Alliance to Stop Slavery and End Trafficking (ASSET) had done in California in bringing forth SB 657", that is California Transparency Act 2010 (A. Wallis, personal communication, November 4, 2021). In addition

to operating the UK's modern slavery helpline Unseen also advises businesses about how they can improve their performance against SDG 8.7 targets.

The ETI is an MSI alliance of companies, trade unions and NGOs focused on improving labour rights in global supply chains. Former Head of Modern Slavery Strategy at ETI, Cindy Berman similarly stated that they "referenced the California Act" as a starting point for section 54, and garnered business support by explaining that without legislation creating an "even playing field" ethically responsible businesses would be undercut competitively by those not taking measures to clean up their supply chains (C. Berman, personal communication, December 21, 2021). There is therefore a trend of Anglo jurisdictions being influenced by the type of modern slavery legislation enacted in each other's countries. There's also a common theme in Anglo countries of business or industry being very much involved in and indeed a significant determinant of the level of stringency of modern slavery legislation enacted. In part, this can be attributed to the political economy of countries with a liberal model where, as noted in Chapter Two, autonomous business actors and not the state typically set the parameters for corporate governance (Mason et al., 2023; Gustafsson et al., 2023(a)).

Demonstrating the diffusion of global norms to a domestic context, witnesses presented their views of modern slavery legislation to the parliamentary committee. Some were in favour of a transparency modern slavery law like the UK's as a first step, and others firmly advocated for a mandatory human rights due diligence (MHRDD) law similar to the one which had recently been passed in France. Amnesty International and the CLC for instance were in favour of MHRDD. Amnesty International urged the Canadian government to "pass legislation requiring companies domiciled or headquartered in Canada to take steps to identify, prevent and address human rights abuses throughout their global operations, including supply chains, through a due diligence process, as set out in the UN Guiding Principles" (Amnesty International, 2017, p. 10). The CLC recommended that Canada "implement human rights' due

diligence legislation that incorporates mandatory transparency, mandatory due diligence and public procurement provisions" (Canadian Labour Congress, 2017, p. 1). Human Rights Watch recommended a MHRDD law with "a civil course of action for those harmed by non-compliance" like the French Duty of Vigilance Law (Human Rights Watch, 2017, p. 4).

Conversely, organizations with more business involvement recommended a transparency law. While acknowledging criticisms of superficial reporting under section 54 of the UK Act, Walk Free Director Chris Evans stressed that it has "changed the conversation" and made businesses and society at large "more aware" of the issue of modern slavery (House of Commons, 2017, p. 7). He also noted that the introduction of transparency legislation should be relatively smooth given that some Canadian companies were already reporting under the UK Act, World Vision had been advocating for an act similar to the UK for some time, and the Mining Association of Canada (MAC) already had a voluntary child and forced labour protocol (House of Commons, 2017). World Vision in addition to supporting transparency legislation also submitted a legal memorandum commissioned from Dentons Canada LLP law firm where ESTMA 2014 was used as a precedent for a federal supply chain transparency law (Dentons, 2016; House of Commons, 2018, p. 39).

Unseen UK also recommended transparency legislation be implemented in Canada, which like the UK Act should not be "overly prescriptive" or impose heavy fines but rely "more on consumer and investor pressure" to encourage a change in corporate behaviour which is the goal (Unseen UK, 2017, p. 5). Noting that the UK legislation needed to be strengthened, the ETI still encouraged Canada to enact a similar transparency law to level the playing field for businesses but also because it is an "effective but light-touch way of regulating industry without compromising economic growth or trade" (ETI, 2017, p. 2). These latter organizations therefore view legislation as a transitional or first step for business, meaning that it can be

reviewed and strengthened at a later date if the desired changes in corporate behaviour are not realized.

The parliamentary study culminated in the report *A Call to Action: Ending the Use of All Forms of Child Labour in Supply Chains* which was presented to the House of Commons on October 15, 2018 (House of Commons, 2018). The report noted witnesses' concern that Canada risked "falling behind" if it did not implement modern slavery legislation in the near future (House of Commons, 2018, p. 36). The Subcommittee therefore recommended "that the Government of Canada advance legislative and policy measures to further motivate businesses to eliminate the use of all forms of child labour in their supply chains" (House of Commons, 2018, p. 3). The Liberal government formally replied to the report on February 8, 2019 stating their intention to conduct consultations in 2019 on possible supply chain legislation (House of Commons, 2019).

The parliamentary study and report therefore demonstrated how the organizations which comprise the global anti-slavery network facilitated the diffusion of global norms into the domestic context of Canada, by acting as regulatory intermediaries of anti-slavery and FCA norms, promoting either transparency or MHRDD legislation. As the rest of the Chapter will demonstrate, however, active norm diffusion by domestic actors, as well as features of Canada's political economy, had a greater impact regarding the enactment of transparency modern slavery legislation. The parliamentary study and report also highlighted the importance of parliamentary committees in advancing issues of modern slavery and corporate accountability, a theme that was also apparent in Chapter Three during the Conservative Era.

iii. Bill C-423: In the Shadow of Bill C-300

Although the Liberal government promised to conduct 2019 consultations regarding the enactment of a modern slavery law, a swifter response came just two months after the

release of the *A Call to Action* report when Liberal MP John McKay tabled Bill C-423, Canada's first modern slavery legislative proposal.

Private Member's Bill C-423, *An Act respecting the fight against certain forms of modern slavery through the imposition of certain measures and amending the Customs Tariff*, was tabled in the House of Commons on December 13, 2018 by Liberal MP John McKay. MP McKay stated that his inspiration for the bill stemmed from the advocacy of World Vision, which facilitated a visit by two UK parliamentarians, MP Fiona Mactaggart and Baroness Lola Young to discuss the implementation of section 54 of the UK MSA and Canada potentially enacting similar legislation (J. McKay, personal communication, January 18, 2022; M. Fischer, personal communication, November 03, 2021). MP McKay felt that modern slavery legislation was up his alley in terms of the previous bills he had introduced with some success (J. McKay, personal communication, January 18, 2022). As discussed in Chapter Three, MP McKay was the driving force behind Bills C-300 and C-474, which became ESTMA 2014, and was therefore very familiar with the FCA regulatory space. He stated that the British model of transparency supply chain legislation, his Christian faith and his political hero British MP William Wilberforce's "battle to abolish slavery in the British Empire" served as his inspiration for Bill C-423 (J. McKay, personal communication, January 18, 2022).

In keeping with his continued role as a regulatory intermediary, MP McKay had Bill C-423 drafted by the Library of Parliament with input from World Vision and Dentons Canada LLP law firm (J. McKay, personal communication, January 18, 2022; M. Fischer, personal communication, November 03, 2021). The bill applied to companies based in or conducting business in Canada which met two of three criteria, that is, having at least $20 million in assets, generating $40 million in revenue, or employing at least 250 employees. It mandated companies to annually report the steps taken the previous year to prevent and reduce the risk of forced or child labour in their supply chains. Failure to report would be sanctioned by a fine

of not more than $250,000.00. The bill also sought to amend the Customs Tariff to prohibit the importation of goods into Canada manufactured by forced or child labour.

The scope of Bill C-423, its thresholds and financial penalty directly mirrored ESTMA 2014, which is unsurprising given that World Vision and Dentons had suggested using ESTMA as a precedent during Canada's 2017 parliamentary study. The bill also improved upon the UK Act by including a fine for non-compliance and making its reporting criteria mandatory so that companies could not simply report that no steps were taken to ensure a slavery free supply chain and still technically be in compliance with the act (Nolan & Bott, 2018, p. 53). This was a source of great criticism of the UK Act. Despite these changes, Bill C-423's light-touch nature still drew criticism from civil society.

Many CSOs opposed the bill because they believed it was neither broad nor robust enough. Amnesty International Canada stated the bill did not go far enough because corporations should be mandated to address the problems they find in their supply chains and provide remedies for those affected by their negligence (Adler, 2018). However, MP McKay defended Bill C-423 as a good first step for Canada as opposed to a MHRDD law which he believed would get little to no support to make it through parliament. MP McKay stated that "this is where the art of the possible versus perfection comes in" (J. McKay, personal communication, January 18, 2022). He acknowledged that a transparency act was not perfect but stated that by adding accountability and liability to the bill he would get progressively less support from stakeholders. He stated "we've calibrated our response to get the most cooperation out of the greatest number of industry representatives…and still maintain the level of political support that we needed" (J. McKay, personal communication, January 18, 2022).

Due to his experience with the mining industry's backlash against Bill C-300, MP McKay was concerns about industry representatives. Catherine Coumans of MiningWatch confirmed this, recalling that MP McKay told her words to the effect "you were in the trenches

with me on Bill C-300, you know how fierce the industry lobby can be and how weak government is" (C. Coumans, personal communication, January 24, 2022). He stated that they should "go for something we think we can get passed and that will still help people and make a difference in people's lives" (C. Coumans, personal communication, January 24, 2022).

MP John McKay elaborated on his strategy of pursuing transparency legislation by citing MP William Wilberforce who, after failing repeatedly to abolish slavery, switched tactics by focusing on abolishing the slave trade and finally had success (J. McKay, personal communication, January 18, 2022). He used this example to show that sometimes one needed to "go through the back door to come out the front door" and stated that he was "prepared to live with a bill that might not be as strong as others might think it should be in order to be able to get a bill at the end of the day" (J. McKay, personal communication, January 18, 2022). MP McKay knew that the bill was unlikely to get a second reading due to his high Private Member's Bill (PMB) number, that is, the bill was too far behind the other private members' bills in the order of precedence. However, his goal in tabling the bill was to create conversation and build public momentum around the issue of modern slavery in supply chains (J. McKay, personal communication, January 18, 2022).

Although the bill was not enacted, its introduction into parliament highlighted some key themes such as the importance of key parliamentarians like MP John McKay in keeping anti-slavery and FCA regulation relevant in parliament. Furthermore, the predominantly Anglo approach and rhetoric of using transparency legislation as a first step to ease companies into mandated reporting can also be observed in MP McKay's strategy. As we will see in the next section, the Liberal government responded to the pressure to address modern slavery in global supply chains.

II. The Liberal Government's Regulatory Response

The Liberal government's initial response to the international pressure to address modern slavery in global supply chains was to establish the office of the Canadian Ombudsperson for Responsible Enterprise (CORE) in 2018. The government also held consultations in 2019 regarding the enactment of modern slavery legislation and implemented a forced labour import ban. The importance of the judicial system, a more traditional state mechanism, in providing access to justice for foreign victims of MNCs via transnational litigation was also highlighted during this period. These measures, which are discussed in this section, signalled a shift by the state from voluntary soft, law to harder forms of law.

i. The Canadian Ombudsperson for Responsible Enterprise

The Canadian Network on Corporate Accountability (CNCA) was an FCA norm regulatory intermediary; since 2013 it had been campaigning for an independent extractive sector ombudsperson. According to the CNCA, the ombudsperson's mandate should include investigatory powers to compel testimony and documents from Canadian companies violating human rights abroad, as recommended by the Advisory Group after the 2006 Roundtables (Keenan, 2020; Advisory Group Report, 2007). During their 2015 federal elections campaign, the Liberals promised to replace the Extractive CSR Counsellor with a stronger CORE (Johnston & Bittle, 2023). Subsequently, on January 17, 2018 the Liberal government announced the creation of CORE which would initially focus on the mining, oil and gas, and garment sectors and eventually expand to other sectors (Global Affairs Canada, 2018). The government also announced the creation of a Multi-stakeholder Advisory Body (MSAB) "to advise the Government and the CORE on responsible business conduct abroad" (Global Affairs Canada, 2018). The MSAB was comprised of fourteen CSOs and labour union representatives

which included the CNCA, MiningWatch, Above Ground and World Vision Canada (CNCA, 2019(b)).

The CNCA recommended that CORE be established under the Inquiries Act which would make the ombudsperson a commissioner and grant them the necessary powers to compel testimony and documents from companies (Keenan, 2020). The mining industry strongly opposed an ombudsperson with an independent investigatory function and in a legal memorandum to the Liberal government the industry suggested that CORE should instead be grounded in "collaborative dispute resolution and joint fact finding" with companies (Keenan, 2020, p. 141). The mining industry made it clear that legal action would be taken if the government granted CORE investigatory powers (Keenan, 2020).

Fifteen months elapsed before the government on April 8, 2019 appointed Sheri Meyerhoffer as the ombudsperson and revealed via order-in-council a mandate devoid of any investigatory powers (Keenan, 2020; Johnston & Bittle, 2023). Instead of an independent office, the Ombudsperson was a "special adviser to the Minister for International Trade" (Government of Canada, 2019(a)). Only a broad overview of office's mandate was provided which included reviewing allegations of human rights violations stemming from the activities of Canadian companies overseas and recommending sanctions for non-cooperative companies such as withdrawal of funding from Export Development Canada (Global Affairs Canada, 2019). Minister of International Trade Diversification Jim Carr indicated that an approximately month long external legal review would be undertaken regarding the powers to independently investigate before the mandate could be confirmed and would be made public around early June 2019 (CNCA, 2019(b)). This announcement greatly displeased civil society. Moreover they regarded Sheri Meyerhoffer with suspicion for her ties to the extractive industry as she was a lobbyist for the Canadian Association of Petroleum Producers (Friedman, 2019).

Civil society organizations accused the Liberal government of reneging on its promise to create an independent ombudsperson with the powers necessary to effectively investigate and instead created another toothless advisory office similar to the Extractive Sector CSR Counsellor and National Contact Point (NCP) (CNCA, 2019(a)). Research Coordinator at MiningWatch Catherine Coumans stated that "industry lobby knocked down Bill C-300 and industry lobby removed those powers from the CORE's mandate to which the government had already committed" (C. Coumans, personal communication, January 24, 2022). Senior Researcher at the CLC Emily Norgang echoed these sentiments noting that "the government really buckled to pressure from the mining industry and lobbyists" (E. Norgang, personal communication, November 17, 2021). Coordinator of the CNCA Emily Dwyer explained that independence was to be the defining feature of the office which was meant to fill the gap between "existing non-judicial mediation-based mechanisms and the courts" (Dwyer, 2019). Three months after the announcement of the ombudsperson, the report produced from the legal review remained undisclosed to the public. At that point only a few weeks remained before the dissolution of parliament for the October 2019 federal election and civil society believed the legal review was more of a stalling tactic than any real commitment to confer investigatory powers (Dwyer, 2019; CNCA, 2019(b)). Due to this betrayal of trust by the Liberal government, on July 11, 2019 all fourteen civil society members of the MSAB resigned (CNCA 2019(b)).

The government updated CORE's mandate on September 6, 2019 but independent investigatory powers were still not included (Keenan, 2020). Civil society was adamant that the only way the government could restore trust was by placing CORE's mandate under the Inquiries Act (CNCA, 2019 (b)). Leaked in 2021 by civil society, the report containing the findings of the external legal review supported enacting legislation to establish the CORE office or appointing the ombudsperson as a commissioner under the Inquiries Act (CNCA,

2021; Pazzano, 2021). Retired lawyer and consultant for the review, Barbara McIsaac, stated that without a way to compel companies which may hold relevant information to participate, CORE's effectiveness could be compromised (CNCA, 2021). In contrast the Mining Association (MAC) believes that CORE is grounded in good practice as it is modelled after the International Finance Corporation's (IFC) Compliance Ombudsman Office which performs collaborative joint fact finding unlike quasi-judicial tools which can heighten conflict. Pierre Gratton, President and CEO of MAC, questioned the "fairness and efficacy" of investigatory powers as the ombudsperson would be able to compel Canadian actors but likely not the principal, non-Canadian actors in the overseas jurisdictions where these human rights abuses occur (P. Gratton, personal communication, January 17, 2022). Senior Vice President of MAC Ben Chalmers concurred and further stated "we already have a court system that provides the judicial avenue" and "mechanisms like CORE and the NCP can provide the greatest value as non-judicial mechanisms that sit alongside the court system" (B. Chalmers, personal communication, January 17, 2022). On the eve of the October 2019 federal election, when new legislation could no longer be enacted, Minister Carr acknowledged in a letter to the CNCA dated September 10, 2019 that the ombudsperson should be granted investigatory powers (Keenan, 2020).

The events surrounding CORE showed that despite the Liberal government claiming to be the opposite of the Conservatives, they continued the light-touch regulation of the mining industry so prevalent in the Conservative era. Even though CORE is a hard law mechanism in sense that it was created through an order-in-council, the ombudsperson lacks hard procedural powers, that is, to compel witness testimony and documents, and can only recommend what sanctions should be taken against implicated companies (Simons, 2023). CORE therefore only has soft law powers. Successive federal governments whether Conservative or Liberal have supported the status quo of voluntary, self-regulation of business, particularly the mining

industry, which can clearly be attributed to the Canadian state's socio-economic history of "symbiosis and interdependence" with the extractive sector, a pervasive theme throughout this narrative. Occurring simultaneously with the events of CORE however were the Liberal government's 2019 consultations on the enactment of a modern slavery law, where civil society and business were again butting heads regarding the stringency of the potential legislation.

ii. Government Consultations to Enact Modern Slavery Legislation

The Liberal Government, via the department of Employment and Social Development Canada (ESDC), held consultations on enacting a modern slavery law in 2019. Former Assistant Deputy Minister of Policy, Dispute Resolution and International Affairs at ESDC Anthony Giles stated that ESDC became involved in spearheading the consultation because the government was required to respond to the *A Call to Action* 2018 report (A. Giles, personal communication, October 26, 2021). He stated that although ESDC was aware of the issue of modern slavery, the report was "like a trigger" because they "hadn't done anything active on the policy front until that report was issued" (A. Giles, personal communication, October 26, 2021). The consultations consisted of three roundtable discussions held in Toronto, Vancouver and Ottawa on May 23, June 11 and June 18, 2019 respectively (ESDC, 2022, p. 11). Over 55 stakeholders from civil society, business, industry and employer organizations, law firms and academics participated (ESDC, 2022, p. 3). Additionally 120 responses to an online survey were received (ESDC, 2022, p. 4 and 13).

Notable attendees included World Vision, the CNCA, the Mining Association of Canada and MP John McKay who attended the Ottawa consultation to provide background context on Bills C-300, C-423 and his other legislative efforts to increase FCA (ESCD 2019, p. 67). The main questions asked were "whether the Government of Canada should pursue

legislation to address labour exploitation in supply chains, and what it should look like" (ESDC, 2022, p. 3).

While all stakeholders agreed that more needed to be done by Canada to more effectively address labour exploitation in supply chains, they disagreed over what precisely was needed. Director General of International and Intergovernmental Labour Affairs at ESDC Rakesh Patry summarized the key fault lines: the general sentiment from civil society and labour organizations was that "Canada should adopt legislation and it should be due diligence not transparency, and we should aim for a high standard" (R. Patry, personal communication, February 4, 2022). In contrast, although industry accepted that legislation was inevitable "their views generally were don't make the reporting obligations too onerous meaning don't bring in too much red tape or make it too complicated for companies" (R. Patry, personal communication, February 4, 2022). Some industry representatives and businesses expressed a preference for "reporting on steps taken to prevent the risk of human rights violations" (ESDC, 2022, p. 10). One industry representative explicitly stated that its members "would be more comfortable" with legislation similar to the UK and Australian MSAs (ESDC, 2022, p. 9).

Companies wanted reports already produced for other jurisdictions such as California or the UK to suffice for Canada (ESDC, 2022, p. 9). They also expressed concerns about how many tiers down the supply chain they could potentially look into the occurrence of forced labour (A. Giles, personal communication, October 26, 2022; R. Patry, personal communication, February 4, 2022). Although businesses were not opposed to MHRDD, they suggested a "phased-in approach" which would "not be overly demanding on businesses" and included "clear criteria, guidance and support from the Government" (ESDC, 2022, p. 5). Therefore despite industry reservations, businesses were willing to at least accept transparency

legislation, which was in line with other Anglo territories and what World Vision and MP John McKay had been working towards.

Although the Liberal government showed a willingness to pursue the enactment of modern slavery legislation, legislative progress was interrupted by the October 21, 2019 federal election. Despite the election of a Liberal minority government, activity with respect to potential legislation was further delayed due to the Covid-19 pandemic which "changed the focus to dealing with the immediacy of addressing the pandemic" (R. Patry, personal communication, February 4, 2022). Despite this however, two significant modern slavery regulatory developments occurred in 2020. The Supreme Court of Canada's decision in *Nevsun v. Araya* demonstrated that transnational litigation could be a route to justice for foreign victims of Canadian MNCs and the Liberal government implemented a forced labour import ban.

iii. Transnational Litigation and Forced Labour Import Ban

In 2020, just a year after the Liberal government created a weak CORE with soft law powers, there was a shift to harder forms of law by both the court and the Liberal government. In 2020, the Supreme Court of Canada demonstrated in *Nevsun v. Araya* that it was willing to advance the law to recognise the validity of claims against MNCs for foreign human rights abuses. Additionally, influenced by the USA, the Liberal government implemented a forced labour import ban which was a requirement of the Canada-United States-Mexico Agreement (CUSMA). This escalation in hard regulatory mechanisms is indicative of responsive regulation where, as demonstrated in Ayres and Braithwaite's pyramid of enforcement in Chapter One, the state is ratcheting up from self-regulation to more punitive command and control regulation due to companies not exhibiting the desired behavioural changes (Ayres & Braithwaite, 1992).

On February 28, 2020, the Supreme Court of Canada made a landmark ruling in the case of *Nevsun v. Araya*, as discussed in Chapter One. Three Eritrean workers claimed that during their military service they were made to perform forced labour, which consisted of, among other things, working twelve hour days six days a week in scorching heat, at the Bisha Mine owned by Canadian company Nevsun Resources Ltd. Claims against Nevsun included "breaches of customary international law prohibitions against forced labour and slavery" and "domestic torts including battery and unlawful confinement" (*Nevsun v. Araya*, 2020, p. 5). Nevsun argued that the act of state doctrine precluded domestic courts from determining matters pertaining to sovereign acts of foreign governments, and also the court should strike claims based on customary international law as they have "no reasonable prospect of success" (*Nevsun v. Araya*, 2020, p. 5). In a majority 5-4 decision, the Supreme Court held that the case could proceed to a trial to determine if Nevsun had breached customary international law, which was a part of Canadian common law, paving the way for new causes of action for business human rights violations (Simons, 2023, p. 22). This ruling also chipped away at legal doctrines such as act of state and *forum non conveniens* which, as discussed in Chapter One, are routinely used by companies to argue that the home state is not the appropriate forum to try these cases (Mijares Peña, 2014; Simons, 2023).

Court processes involving overseas incidents are expensive and slow with an average timeline of "seven to ten years" as noted by Senior Associate at Dentons Canada LLP Sean Stephenson (personal communication, November 12, 2021). However Canadian CSOs saw *Nevsun v. Araya* as a victory. Director of Above Ground and member of the CNCA Karen Hamilton commented that the case revealed "a willingness" and "openness in the courts to see these cases as being valid" and considered the threat of transnational litigation to be a deterrent to companies and "a parallel strategy to other areas of work" such as campaigning for MHRDD

legislation which would include access to remedy for victims through civil courts (K. Hamilton, personal communication, December 8, 2021).

Later that year, on July 1, 2020, Canada's forced labour import ban came into force when CUSMA replaced the 1994 North American Free Trade Agreement (NAFTA). CUSMA's labour chapter mandates each party to the agreement prohibit the importation of goods from other territories produced by forced or child labour (Government of Canada, 2020). This obligation was implemented in Canadian law by amending tariff item 9897.00.00 of the Customs Tariff Act, 1997 to include a prohibition on "goods mined, manufactured or produced wholly or in part by forced labour" (Customs Tariff, 1997, s.132(1)(m)(i.1)). Director General of International Labour Affairs for ESDC Rakesh Patry explained that regarding the forced labour ban, "the Government of Canada ultimately agreed to include that obligation in the CUSMA given the USA's push for such an approach, and its long standing import prohibition, during agreement negotiations" (R. Patry, personal communication, February 4, 2022). He viewed the import ban as "a complementary piece to any potential supply chain legislation in Canada" (R. Patry, personal communication, February 4, 2022). Whether the ban compliments or undermines legislation is explored in Chapter Five but this shows the influence of USA trade relations on the development of modern slavery regulation in Canada.

Canadian business associations were sceptical about the import ban. Vice President of Policy and International at the Canadian Chamber of Commerce Michael Harvey stated that companies needed more clarity and government guidance regarding how the Canada Border Services Agency (CBSA) determines that goods should be blocked and that the potential introduction of supply chain legislation while still trying to figure out the logistics of the import ban was "quite a heavy lift" for businesses (M. Harvey, personal communication, February 8, 2022). To date, the import ban has not proven to be very effective in Canada. Only one shipment to date containing clothing from China was blocked at the Quebec border in

September 2021 but was ultimately allowed into the country after the importer successfully appealed (Chase, 2021; Ballingall, 2024). Furthermore, details of the goods detained were limited due to the confidentiality surrounding enforcement actions against importers raising questions about the Liberal government's lack of transparency.

Despite the issues with these two hard law regulatory techniques, there is clearly an attempt by the Liberal government and Supreme Court to use hard law mechanisms. Furthermore, as described in Chapter One, these hard law mechanisms are being layered over the already existing voluntary, soft law mechanisms with the aim of increasing FCA (Mahoney & Thelen, 2009). The Liberal government would continue this trend of hardening and layering regulation by finally enacting modern slavery legislation in 2023, a hard, reflexive regulatory mechanism.

III. The Passage of Canada's Modern Slavery Act

By 2020, the narrative that Canada was "slow" and "falling behind internationally" in passing modern slavery legislation was growing among advocates for a law (E. Norgang, personal communication, November 17, 2021). Enacting modern slavery legislation was not a priority of the Liberal government. Their loss of a majority government made it harder to pass laws without the support of another party and the Covid-19 pandemic demanded all their attention. Nevertheless parliamentarians such as MP John McKay in partnership with Senator Julie Miville-Dechêne, who would also act as a key regulatory intermediary, continued to place pressure on the government for transparency legislation by tabling draft legislation which was supported by business. Conversely, the CNCA and NDP would collaborate in advocating for MHRDD legislation.

Increased international pressure for a modern slavery law built as the media revealed that a raft of products manufactured by forced labour during the pandemic, notably from China

and Malaysia, had found their way into Canada via supply chains tarnishing Canada's global image as a protector of human rights. As this section will explain, the pandemic delayed legislation because parliamentary sessions were cancelled during it. However, the media focus on forced labour goods entering Canada during the pandemic also highlighted the need to enact legislation. Important themes therefore emerge in this section such as the importance of key parliamentarians and CSOs acting as anti-slavery and FCA norm intermediaries in advocating for and against transparency legislation. Business support for transparency legislation played a crucial role in the stringency of legislation. The dual effect of the pandemic in delaying legislation yet highlighting the need for legislation will be apparent. The influence of the Anglosphere will also be apparent, with the Liberal government ultimately enacting light-touch transparency legislation similar to other Anglo countries. The full support of the Conservative party for a transparency law made enactment possible. This not only demonstrates the importance of cross-party support, but also the similarity of the Liberal and Conservative parties despite the Liberals claiming otherwise.

i. The Resurgence of Bill C-423 as Bill S-211 in the Senate

At the beginning of 2020 the Liberal government was operating as a minority government and progress on the potential passage of a modern slavery act had stalled. MP John McKay however was persistent in his mission to keep the issue of legislation alive in parliament and consequently he partnered with Independent Senator Julie Miville-Dechêne to reintroduce Bill C-423, but this time as Bill S-211 in the Senate. MP McKay confirmed that he did this "for tactics" because in addition to the Liberals having the disadvantage of a minority government, he had again drawn a high PMB number, which meant it was unlikely the bill would be addressed in the House of Commons (J. McKay, personal communication, January 18, 2022). As there are no PMB numbers in the Senate, he believed that the Bill could make more progress

in the upper house and Senator Miville-Dechêne agreed. He further explained that his choice of Senator Miville-Dechêne as a partner was due to her province being Québec and her appeal to francophones as well as feminists and the "ultra-progressives of the Québec intelligentsia" with her background as a member of Canadian Association of Feminist Parliamentarians and a former Canadian Broadcasting Corporation (CBC) journalist (J. McKay, personal communication, January 18, 2022; J. Miville-Dechêne, personal communication, October 14, 2021).

Senator Miville-Dechêne explained that her interest in modern slavery stemmed from her 2011 appointment as head of the Conseil du statut de la femme or Council on the Status of Women (CSF) Québec (J. Miville-Dechêne, personal communication, October 14, 2021). Her role as part of this research council was to advise the Government of Québec but also to speak about public issues concerning women including prostitution, forced marriage and sex trafficking (J. Miville-Dechêne, personal communication, October 14, 2021). Regarding her sponsorship of Bill S-211, she stated that in contrast to her, MP McKay was "from Ontario, Scarborough, English speaking" and "a jurist with twenty years of experience in the House of Commons" (J. Miville-Dechêne, personal communication, October 14, 2021). Due to these factors she believed they would make a good team on the issue of modern slavery "covering the House of Commons and Senate" (J. Miville-Dechêne, personal communication, October 14, 2021).

On February 5, 2020 Senator Miville-Dechêne introduced Bill S-211, *An Act to enact the Modern Slavery Act and to amend the Customs Tariff*, into the Senate. The bill made it to a second reading where she described it as "a tool for transparency" which would "help Canada to more strictly adhere to the letter of its international commitments" (Senate of Canada, 2020). She stated that Canada had fallen behind other countries in holding its companies accountable for labour violations committed abroad and that Canada had for too long relied on self-

regulation by companies to inspect their suppliers (Senate of Canada, 2020). She acknowledged the bill's limitations including its "modest" fine of $250,000.00 modelled after ESTMA 2014, and absence of an obligation to reduce the use of forced labour by subcontractors, which was why the bill was a "first step" (Senate of Canada, 2020).

The rhetoric that the bill was a first step clearly stemmed from the influence of the Anglo approach to modern slavery legislation. Additionally, as discussed in Chapter Two, framing of a new norm is important to build congruence and achieve norm localization (Acharya, 2004). Strategic framing of transparency legislation as a first step would be palatable to business, as it indicated there would not be a displacement of the voluntary, corporate self-regulation which has been the status quo in Canada for decades, but rather just strengthening this existing institution with a mandatory reporting requirement. This framing can also serve as a long term strategy for eventual introduction of MHRDD legislation, after businesses have had time to adjust to transparency legislation.

Bill S-211 received cross-party support in the All Party Parliamentary Group (APPG) to End Modern Slavery and Human Trafficking, which is comprised of mostly Liberals and Conservatives. APPG founding member and Co-Chair Conservative MP Arnold Viersen explained that the group was founded in 2016 and modelled after the exact type of APPG in the UK parliament, again highlighting the Anglo influence (A. Viersen, personal communication, February 3, 2022). MP Viersen explained that the APPG had already been drafting modern slavery legislation in conjunction with the University of British Columbia's Allard Law School legal clinic. However, when MP McKay became an APPG Co-Chair and asked the group for support for Bill S-211, explaining that the bill had been introduced into parliament before so it was familiar to parliamentarians and they should be able to get it passed, the APPG agreed (A. Viersen, personal communication, February 3, 2022).

Regarding support from the APPG, MP McKay stated that in a minority parliament "you have to look for friends and so this is a good way to make friends" (J. McKay, personal communication, January 18, 2022). MP Viersen confirmed that APPG members actively pushed to get the legislation on the Liberal and Conservative platforms respectively (A. Viersen, personal communication, February 3, 2022). This shows the importance of cross-party coalitions in successfully moving legislation through parliament. As explained in Chapter One, coalition dynamics are important because social change is rarely effected alone (Mahoney & Thelen, 2009). MP McKay working with World Vision, partnering with Senator Miville-Dechêne and obtaining support from the APPG is an example of such coalition dynamics.

The second reading of Bill S-211 was never completed, with progress being halted on March 12, 2020. MP McKay explained that it did not progress because in the Senate, "if somebody from the other side doesn't speak to it, then it goes nowhere" (J. McKay, personal communication, January 18, 2022). He did note though that Bill S-211 kept momentum going and kept the issue of modern slavery in the public consciousness (J. McKay, personal communication, January 18, 2022). Another crucial reason for the lack of attention paid to the bill however, was the Covid-19 pandemic which began in March 2020.

ii. Modern Slavery Legislative Attempts During the Covid-19 Pandemic

Covid-19 was officially declared a pandemic on March 11, 2020. The Liberal government announced on March 13, 2020 that parliament would be adjourned until April 20, 2020 to deal with the pandemic (The Canadian Press, 2021). Then on August 18, 2020 the government announced that parliament would be prorogued until September 23, 2020 to allow time for presentation of a throne speech setting out plans for long term recovery from the pandemic (Erskine, 2020). This meant that all bills including Bill S-211, that did not receive royal assent died on the order paper and would have be reintroduced in the next session

(Erskine, 2020; Marleau and Montpetit, 2000). Senator Miville-Dechêne noted that it was just "bad timing" for Bill S-211 (J. Miville-Dechêne, personal communication, October 14, 2021). After prorogation, on October 29, 2020, Senator Miville-Dechêne tabled another iteration of the modern slavery act in the Senate, Bill S-216 entitled *An Act to enact the Modern Slavery Act and to amend the Customs Tariff*. It was essentially the same as its predecessor and its main elements are set out in ***Table 3*** which summarizes Canada's legislative proposals for a modern slavery law (Fudge et al., 2022, p. 19). On one hand the pandemic slowed down the progress of the bill as many Senate sessions were cancelled because of it (J. Miville-Dechêne, personal communication, October 14, 2021). On the other hand, reports by international agencies such as the ILO about the increase in forced and child labour due to the pandemic put a global spotlight on modern slavery in supply chains, which Senator Miville-Dechêne and MP McKay used to their advantage.

Two main issues highlighted modern slavery in Canadian media. The first was a CBC Marketplace report on January 15, 2021 which exposed the appalling forced labour conditions in the Malaysian Top Glove factory which supplied Personal Protective Equipment (PPE) to Canadian hospitals (Szeto et al., 2021). The second was products such as cotton made using Uyghur Muslim forced labour in Xinjiang China making their way into Canada via supply chains. On March 22, 2021, the Foreign Ministers of Canada and the UK along with the USA's Secretary of State made a joint statement condemning the human rights violations in China, and Canadian businesses sourcing from Xingjian were mandated to sign an Integrity Declaration stating that they were not sourcing from Chinese entities involved in these violations (Government of Canada, 2021).

Senator Miville-Dechêne stated that these forced labour issues created a "very strong narrative in the press" and raised questions about the Liberal government cleaning up its own supply chain, as a substantial number of masks and PPE were imported from China during the

pandemic without knowing exactly who was producing it (J. Miville-Dechêne, personal communication, October 14, 2021). In addition to trying to build consensus inside and outside parliament for the bill, Senator Miville-Dechêne wrote articles on modern slavery and the pandemic because "the media was completely focused on the pandemic" (J. Miville-Dechêne, personal communication, October 14, 2021). The effect of the pandemic on legislation was therefore twofold, both delaying it and highlighting the need for it with the increase in forced labour.

Bill S-216 did not make it past its second reading, although it may have progressed further had Prime Minister Justin Trudeau not called a snap election on September 20, 2021 in an attempt to regain a majority government. However, these media scandals, which put Liberal government and its commitment to protecting human rights in a bad light "put pressure on the government to do something" in terms of modern slavery legislation (E. Norgang, personal communication, November 17, 2021). This was reflected in the fact that both the Liberals and the Conservatives included the introduction of legislation in their 2021 federal election campaign platforms.

iii. Enactment of and Opposition to Bill S-211

The 2021 federal election was a turning point for legislation as both the Liberals and Conservatives promised in their campaign platforms to introduce a modern slavery law (Liberal Party of Canada, 2021, p. 67; Conservative Party of Canada, 2021, p. 106). This was an early indication that these two major political parties were in support of modern slavery legislation. The Liberals secured yet another minority government. Four Ministers' mandate letters (Ministers of Labour, International Trade, Public Services and Procurement, and Public Safety) included introducing supply chain legislation, further confirming that modern slavery legislation was a priority of the Liberal government (A. Giles, personal communication,

October 26, 2021). Furthermore, an unprecedented number (four) of private member bills concerning modern slavery and increased corporate accountability were introduced into parliament. Two of these bills were proposed transparency laws once again tabled by Senator Miville-Dechêne and MP John McKay. The other two bills, tabled by NDP MPs Peter Julian and Heather McPherson, directly opposed the light-touch transparency bills by proposed MHRDD legislation and replacing CORE with an office capable of independent investigations.

For the third time, on November 24, 2021, Senator Miville-Dechêne introduced 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*, into the Senate. Notable changes in this iteration of the bill, the elements of which are set out in ***Table 3***, included government entities in addition to companies having to report on their supply chains and that any due diligence processes conducted must be reported. Similar to the Australian MSA 2018, this did not mean that entities were required to conduct due diligence, only report whether or not they did. In terms of the strength of the bill therefore, it remained fairly weak self-reflexive law despite being a hard law mechanism.

In addition to Bill S-211, MP McKay asked Liberal MP Marcus Powlowski to table Bill C-243, *An Act respecting the elimination of the use of forced labour and child labour in supply chains*, in the House of Commons which he did on February 8, 2022. The bill is similar to its predecessors but also applies to government entities as set out in ***Table 3***. MP McKay made this request because MP Powlowski had a lower PMB number than him and he wanted bills in both the Senate and House, explaining that he had a "pincer movement" going on (J. McKay, personal communication, January 18, 2022). He stated that it didn't matter which bill progressed or if the government wanted to introduce their own, but these tactics were necessary to speed up the process because time was "the enemy" as "the average minority parliament

lasts two years" and he would be hard pressed to get royal assent in that time frame (J. McKay, personal communication, January 18, 2022).

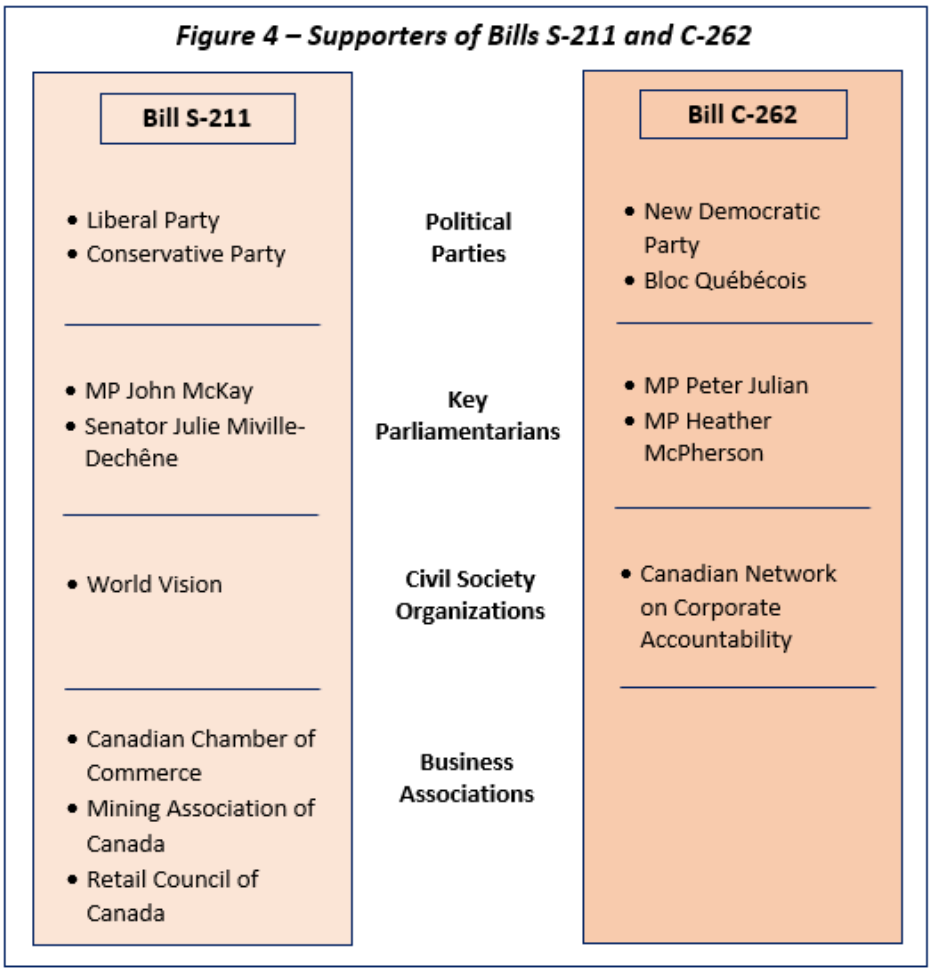
Bill S-211 was supported by industry, business associations, World Vision and the Liberal and Conservative parties. Briefs submitted by MAC, the Retail Council of Canada and the Canadian Chamber of Commerce during the bill's consideration in the Senate by the Human Rights Committee showed they were willing to accept a transparency law (MAC, 2022; RCC, 2022; CCC, 2022). MAC indicated to Senator Miville-Dechêne their preference for "legislation which allows for equivalency" with the UK and Australian Acts, so that a single report would suffice across jurisdictions (P. Gratton, personal communication, January 17, 2022). MAC also supported the provision allowing a parent corporation to provide a single report covering all of its subsidiaries (B. Chalmers, personal communication, January 17, 2022). Reduced administrative burden was therefore a priority for industry. Smaller businesses such as fair trade banana importer Equifruit also supported the bill. Equifruit's President and owner Jennie Coleman hoped to gain greater access to supermarket chains once grocers were required to become more vigilant about their suppliers' use of forced and child labour (J. Coleman, personal communication, January 21, 2022; Senate of Canada, 2020).

Liberals and Conservatives agreed that the bill was a good first step. Liberal MP Iqra Khalid supported "easing corporations into being more accountable" with transparency legislation, and if that proved to be insufficient, introducing MHRDD legislation as "step two" (I. Khalid, personal communication, January 25, 2022). Conservative MP Garnett Genuis at the bill's second reading in the House of Commons stated that although Bill S-211 would not "solve every problem" they should "work to pass the bill and strengthen it" (House of Commons, 2022). Simon Lewchuk former Senior Policy Advisor at World Vision stated that although years had passed since World Vision had begun campaigning for legislation in 2016 and MHRDD was now the "gold standard", there were "trade-offs with every model" and

ultimately "it comes down to what's possible right now" (S. Lewchuk, personal communication, November 19, 2021). Bill S-211 therefore had the required support from parliament and industry, however, it was firmly opposed by the CNCA and the NDP.

In another example of coalition dynamics, the CNCA provided model legislation to NDP MPs Peter Julian and Heather McPherson to assist with the drafting of Bills C-262 and C-263 which were tabled in the House of Commons on March 29, 2022. MP Julian, whose long history of acting as a FCA norm regulatory intermediary in parliament was noted in Chapter Three, introduced Bill C-262, *An Act respecting the corporate responsibility to prevent, address and remedy adverse impacts on human rights occurring in relation to business activities conducted abroad*. It mandates Canadian MNCs to implement due diligence processes and allows foreign victims of corporate human rights abuses recourse in Canadian courts, as summarized in ***Table 3***. MP Heather McPherson introduced Bill C-263, *An Act to establish the Office of the Commissioner for Responsible Business Conduct Abroad and to make consequential amendments to other Acts*. This bill proposed to replace the CORE with a Commissioner for Responsible Business Conduct Abroad and provide the Commissioner with the investigatory powers to compel testimony and documents. MP McPherson at Bill S-211's second reading in the House of Commons noted that neither the Liberals nor the Conservatives had ever implemented legislation to protect victims from bad corporate actors, predominantly in mining and textiles, and neither government had implemented an ombudsperson who could properly do the job. She stated that the NDP bills were what was truly required if Canada was going to "walk the talk on human rights" (House of Commons, 2022). The Bloc Québécois (BQ) agreed with the NDP MPs, with BQ MP Simon-Pierre Savard-Tremblay likening Bill S-211 to an "empty shell" in the bill's final reading (House of Commons, 2023). Supporters of Bills S-211 and C-262 respectively are summarized in ***Figure 4***.

Figure 4 – Supporters of Bills S-211 and C-262



Despite the opposition, on May 3, 2023 Bill S-211 passed its third reading, receiving royal assent on May 11, 2023. It was supported by both the Liberals and Conservatives with 271 votes. The NDP and Bloc Québécois opposed, making it a total of 57 negative votes (House of Commons Canada, 2023). The bill is set to come into force on January 1, 2024 although both industry and MP McKay have requested an extension to give the government and companies more time to prepare (Rajagopal, 2023). Initial reports are due on May 31, 2024. The Liberal government has announced in its 2023 and 2024 budgets its intention to introduce its own modern legislation by 2024 (Budget 2023, p. 171; Budget 2024, p. 410). This will likely be more robust MHRDD legislation which would not only differentiate them from the Conservatives but also lend credence to their claim that transparency legislation was a first step and not a dead end.

Conclusion

This Chapter answered research question two by illustrating the international and domestic factors which influenced transparency legislation being introduced into the Canadian parliament to combat modern slavery. Canada's cultural, political and economic links to the Anglosphere, the advocacy of key parliamentarians and CSOs, support from business, political party ideology and cross-party support for a transparency law were critical in shaping Canada's supply chain legislation. Despite facing increased international pressure, the Trudeau Liberal government's overall approach to FCA proved to be very similar to that of the Harper Conservative government, that is, a light-touch approach to regulating business and the mining industry in particular. The failed promise to grant CORE hard powers to independently investigate MNCs was in essence a repeat of the soft powers of the Extractive Sector CSR Counsellor. This highlighted the strength of the mining industry in Canada and its close relationship with the state regardless of which party is in power. However, there was a shift away from voluntary self-regulation by MNCs to hard, regulatory mechanisms by the Liberal government and the Supreme Court of Canada demonstrated by the implementation of a forced labour import ban, which was influenced by USA trade relations, the Supreme Court ruling in *Nevsun v. Araya*, and finally the enactment of modern slavery legislation.

The importance of CSOs and key parliamentarians as anti-slavery and FCA norm regulatory intermediaries was evident. MP John McKay and Senator Miville-Dechêne consistently advocated for and tabled modern slavery legislation, despite the Liberal government's delayed attempts to introduce legislation due to the Covid-19 pandemic and the loss of a majority in parliament. The influence of the Anglospheric faction of the global anti-slavery network however was apparent in MP McKay, Senator Miville-Dechêne and the Liberal government's support of transparency legislation as a first step, rhetoric which stems

directly from organizations such as Walk Free, Unseen UK and the ETI. Although the CNCA and NDP criticized Bill S-211, its requirement to include any due diligence processes lends itself to be easily transitioned into MHRDD legislation, which the Liberal government indicated might be its next step. This Chapter therefore also begins to answer research question three, which is concerned with situating Canada in the landscape of emerging regulatory techniques to combat forced labour in supply chains. The Liberal government's layering of increasingly hard regulatory mechanisms is clearly meant to strengthen Canada's overall regulatory response to modern slavery. Chapter five will further address research question three by exploring whether MHRDD legislation is superior to transparency legislation and whether the layering of regulatory techniques is strengthening or weakening Canada's response to modern slavery.

Table 3 – Canadian Legislative Proposals to Combat Modern Slavery

ELEMENTS		Bill S-216 (2020)	Bill S-211 (2021)	Bill C-243 (2022)	Bill C-262 (2022)
Title		The *Modern Slavery Act*	The *Fighting Against Forced Labour and Child Labour in Supply Chains Act*	The *Ending the Use of Forced Labour and Child Labour in Supply Chains Act*	The *Corporate Responsibility to Protect Human Rights Act*
Purpose/Rationale		To contribute to the fight against modern slavery through the imposition of reporting obligations on entities (producers and importers)	To contribute to the fight against child labour and forced labour through the imposition of reporting obligations on entities (producers and importers) and government institutions (producers, purchasers, and importers)	To contribute to fight against child labour and forced labour in supply chains through the imposition of reporting obligations on entities (producers and importers)	To prevent, address, and remedy the adverse impacts on human rights that occur in relation to business activities conducted by entities abroad.
Coverage		Child labour, as defined under Canadian law and in the *Worst Forms of Child Labour Convention*, 1999 Forced labour, as defined under Canadian law and in the *Forced Labour Convention*, 1930			Human rights, including the right to a healthy environment and rights recognized under the identified international human rights instruments[24]
Scope	***Legal Form***	Corporations, trusts, partnerships, and other unincorporated organizations	Corporations, trusts, partnerships, other unincorporated organizations, and government entities	Corporations, trusts, partnerships, other unincorporated organizations, and government entities (via amendment to the *Department of Public Works and Government Services Act*)	Corporations, trusts, partnerships, and other associations, but specifically excluding registered charities, non-profit organizations, and trade unions
	Nexus	▪ Listed on a stock exchange in Canada; or ▪ Has a place of business in Canada, does business in Canada, or has assets in Canada, and meets at least two of the following conditions for at least one of the two most recent financial years: i. At least $20 million in assets ii. At least $40 million in revenue generated iii. An average of at least 250 employees			▪ incorporated or formed in Canada; or ▪ has a place of business in Canada, carries on business in Canada, or has assets in Canada that are used in carrying on the entity's business

[24] The Schedule to Bill C-262 lists 22 international human rights instruments.

ELEMENTS		Bill S-216 (2020)	Bill S-211 (2021)	Bill C-243 (2022)	Bill C-262 (2022)
	Covered business activities	▪ Produces or sells goods in Canada or elsewhere ▪ Imports goods produced outside Canada; or ▪ Controls an entity that does either of the above	▪ Produces, sells, or distributes goods in Canada or elsewhere ▪ Imports goods produced outside Canada; or ▪ Controls an entity that does either of the above	Same as Bill S-216	▪ Carries out business activities abroad ▪ Has affiliates (incl. subsidiaries and other controlled or controlling entities) which carry out business activities abroad ▪ Has business relationships, including with individuals and entities that are in its supply chain, or directly linked to its operations, products, or services
Duty of due diligence	***General obligation***	None			▪ Duty to avoid causing adverse impacts on human rights resulting from the entity or its affiliates' acts or omissions, to occur outside Canada ▪ Duty to prevent adverse impacts on human rights resulting from the entity's business relationships from occurring outside Canada
	Due diligence procedures	None			▪ Identify and assess actual and potential adverse impacts on human rights resulting from activities and business relationships ▪ Cease any activity that leads to adverse impacts and take remedial action ▪ Mitigate risks of adverse impacts ▪ Develop internal alert mechanisms to warn of any potential adverse impacts on human rights.
Duty to consult		None			Due diligence procedures must be developed and implemented in consultation with: ▪ directly affected individuals (or their representatives) ▪ trade unions ▪ employees ▪ affected communities; and ▪ other relevant stakeholders, incl. independent experts

Table 3, page 1/3

ELEMENTS		Bill S-216 (2020)	Bill S-211 (2021)	Bill C-243 (2022)	Bill C-262 (2022)
Duty to report	***Reporting obligation***	A report that sets out the steps the entity has taken to prevent and reduce the risk that forced labour or child labour is used at any step of the entity's production (in Canada or elsewhere) or import of goods	*Replicates S-216* and, in addition, permits entities to produce reports jointly and to revise their reports	*Replicates S-216* and, in addition, requires entities to report on steps taken with respect to entities they control, and allows entities to revise reports	A report on the entity's due diligence
	Content of report	▪ Structure and goods produced or imported ▪ Policies on child labour and forced labour ▪ Activities that carry a risk and steps taken to assess and manage risk ▪ Remediation measures taken ▪ Training provided to employees	▪ Structure, activities, and supply chains ▪ Policies and due diligence processes ▪ Parts of business and supply chains that carry risk and steps taken to assess and manage risk ▪ Remediation measures ▪ Training provided to employees ▪ Methods for assessing effectiveness in ensuring that forced labour and child labour are not being used in business and supply chains	▪ Structure, business. and supply chains ▪ Policies on child labour and forced labour ▪ Parts of business and supply chains that carry risk and steps taken to assess and manage risk ▪ Remediation, including due diligence processes ▪ Training provided to employees ▪ Methods for assessing effectiveness in ensuring that forced labour and child labour are not being used in business and supply chains	▪ Due diligence procedures implemented and their effectiveness ▪ Business activities and business relationships covered by due diligence procedures ▪ List of affiliates covered by due diligence procedures ▪ Activities in respect of which a risk of adverse impacts on human rights has been identified and measures taken to assess and mitigate the risk
	Publication requirement	The report must be made available to the public, including publication in a prominent place on the entity's website.	*Replicates S-216* and, in addition, requires federal corporations to provide report to shareholders along with annual financial statements	*Replicates S-216* and, in addition, requires all corporations to provide report to shareholders along with annual financial statements	The report must be made public.
	Registry	Minister must maintain an electronic registry of reports that is made publicly available on the Ministry's website			None
	Approval	The report must include an attestation by a director or officer of the entity	The report must include a statement of approval from the entity's governing body	The report must be approved by the governing body of entity and	None

ELEMENTS		Bill S-216 (2020)	Bill S-211 (2021)	Bill C-243 (2022)	Bill C-262 (2022)
			and the manual signature of one or more of its members	evidenced by the manual signature of one or more of its members of	
	Frequency of reporting	Annual - 180 days after the end of each financial year	Annual - On or before May 31 of each year		Annual
Duty to document		None			Entities must monitor and document the implementation and effectiveness of their due diligence procedures
Workplace grievance and remedy mechanisms		None			
Public enforcement	***Penalties***	▪ Summary conviction offence and maximum fine of $250,000 for entities which fail to report or knowingly make false or misleading statements or information ▪ Officers and directors are liable if they directed, authorized, assented to, acquiesced, or participated in the commission of the offence ▪ Offences committed by employees will be attributed to the entity unless the entity exercised due diligence to prevent its commission			None
	Powers to compel	▪ Designated persons may enter any relevant place to obtain and examine documents and data ▪ The Minister may require non-compliant entities to take measures to comply			None
	Withdrawal of government support	None			Government support or funding to an entity may be withdrawn if there are reasonable grounds to believe it has failed to meet its obligations
	Supervisory agency	None			Appointment of a commissioner with a mandate to ensure compliance by entities with business activities or relationships abroad
Access to remedy and civil liability	***Civil liability regime***	None			An entity is liable for any injury that results from its failure to comply with obligation to prevent adverse impacts
	Rights of action and limitation periods	None			▪ Action against an entity for loss or damage resulting from failure to comply with obligation to prevent adverse impacts ➢ Limitation period: 5 years, except allegations of sexual assault for which there is no limitation period

Table 3, page 2/3

ELEMENTS		Bill S-216 (2020)	Bill S-211 (2021)	Bill C-243 (2022)	Bill C-262 (2022)
					▪ Action against an entity for failure to develop and implement due diligence procedures (limited to matters arising in the human rights protection context) ➢ Limitation period: 2 years
	Jurisdiction	N/A			Canadian courts will have jurisdiction if entity is: ▪ domiciled or ordinary resident in the jurisdiction; or ▪ explicitly submits to the jurisdiction; or ▪ there is a real and substantial connection between the facts of the action and the jurisdiction
	Standing	N/A			Any person who: (a) raises a serious issue and is directly affected by the matter; or (b) has a genuine interest in the matter, presents a reasonable means of advancing the proceeding, and has no conflict of interest
	Remedies	N/A			Damages for loss suffered, aggravated or punitive damages, injunction, specific performance order, costs of the action
	Defences	N/A			The entity must establish that it exercised all due diligence to prevent the adverse impact
Import prohibition		Introduces an amendment to the *Customs Tariff* to exclude goods that are mined, manufactured, or produced wholly or in part by forced labour or child labour		N/A[25]	N/A[25]

[25] On July 1, 2020, the *Customs Tariff Act* was amended to prohibit the importation of goods produced by forced labour or prison labour, as part of the implementation of the Canada-United States-Mexico Agreement.

Table 3, page 3/3

Chapter 5

Situating Canada's Regulatory Response to Forced Labour in Global Supply Chains

> Any due diligence, any remediation of forced labour should be centred on workers. They should be involved in the design, implementation and evaluation. They're the ones experiencing the conditions of forced labour but it seems like they're still not meaningfully included.
>
> —Anasuya Syam, Human Trafficking Legal Center, *personal communication*, *2022*

Introduction

Chapter Four discussed the influences behind the introduction and passage of Bill S-211, the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* 2023 in the Canadian parliament. Although a coalition of civil society organizations (CSOs) and parliamentarians, namely the Canadian Network on Corporate Accountability (CNCA) and New Democratic Party (NDP) members of parliament (MPs) Peter Julian and Heather McPherson, advocated for a mandatory human right due diligence (MHRDD) law it was ultimately Liberal MP John McKay and Senator Julie Miville-Dechêne's transparency Bill S-211 which was passed in 2023. Thus the model preferred in the Anglosphere, consisting of transparency obligations narrowly focused on child and forced labour, prevailed. In addition to enacting transparency legislation, the Canadian Liberal government has also implemented other regulatory tools such as the Canadian Ombudsperson for Responsible Enterprise (CORE), a non-judicial grievance mechanism, as well as a forced and child labour import ban. Moreover, transnational litigation remains an option for victims of the activities of multinational corporations (MNCs) abroad. Canada has therefore been moving away from voluntary initiatives, and has been hardening its regulatory response to modern slavery by introducing a mandatory disclosure requirement for companies and hard law in the form of an

import ban alongside CORE and the judicial system. These mechanisms build upon corporate social responsibility (CSR) and multi-stakeholder initiatives (MSIs) which corporations have voluntarily embraced.

Canada therefore has a multi-layered approach to combatting modern slavery and forced labour in global supply chains (GSCs). The question however is whether the layering of these techniques strengthen Canada's regulatory response or whether the different layers displace one another and actually weaken Canada's response to modern slavery in supply chains. This Chapter argues that in the landscape of regulatory techniques being used globally to address modern slavery, the regulatory initiatives implemented by Canada are ineffective in terms of raising labour standards for supply chain workers. Furthermore the combination of some of these techniques, such as transparency and a potential MHRDD law triggering safe harbours and displacing litigation, may have unintended and in fact disastrous consequences for workers.

This Chapter considers Canada's regulatory response to forced labour in GSCs and aims to locate it amongst the governance and regulatory techniques being used in various jurisdictions to address modern slavery. It answers research question three "where is Canada situated in the landscape of emerging regulatory techniques to combat forced labour in supply chains?" It begins by situating Bill S-211 in a typology of modern slavery laws ranging from transparency or disclosure laws to MHRDD legislation. The most frequent criticism of these laws will then be outlined with the aim of considering if one model in the typology is truly superior to the others. Following this, an assessment of the way Canada's various regulatory tools interact with each other, and specifically whether they strengthen or displace each other, will be conducted. This includes for instance whether the effects of MHRDD laws and the import bans match or clash in their attempts to protect workers or whether the Canada Border Services Agency (CBSA) will be informed by CORE's reports in detecting imports produced

with forced labour. Finally, regulatory developments in other parts of the world such as joint and several liability and the worker-driven social responsibility (WSR) model will then be discussed, specifically whether Canada can learn any lessons from these initiatives about the importance of worker voice and incorporate such lessons into its regulatory strategy.

Typology of Modern Slavery Laws

As discussed in Chapter One there has been a global trend of home state governments hardening soft law initiatives such as the United Nations Guiding Principles on Business and Human Rights (UNGPs) and Organisation for Economic Co-operation and Development (OECD) Guidelines (Phillips et al., 2018; Bergkamp, 2018). Modern slavery laws, which rose in popularity after events such as the collapse of Rana Plaza emphasized the failure of voluntary corporate self-regulation, are a prime example of such hardening. These laws are a hybrid mix of both public and private regulation with extraterritorial effects (Mares, 2018). Governments leverage the power of private corporate actors and other stakeholders to achieve the regulatory goal of changing corporate behaviour and practices with regards to modern slavery in GSCs (Phillips et al., 2018; Mares, 2018).

These laws vary in their design and stringency but can be categorised into three models: (1) disclosure or transparency legislation; (2) human rights due diligence legislation; and (3) human rights due diligence legislation with civil liability (LeBaron & Rühmkorf, 2017). These models exist on a spectrum where transparency laws are considered the least stringent or "softest form of law" and due diligence with civil liabilities are considered the "most stringent or hardest form of law" (LeBaron & Rühmkorf, 2017, p. 17). While the typology in Chapter One outlined the broader set of soft and hard law governance and regulatory initiatives implemented in Canada, the following section focuses on typologizing only modern slavery laws, including Bill S-211, according to their general requirements and spectrum of rigour.

This is a necessary exercise because, as Chapter Four discussed, transparency versus MHRDD legislation is where most of the controversy occurs in regulatory debates.

Disclosure or Transparency Legislation

The disclosure or transparency model is the first generation of modern slavery laws. These laws are mainly concerned with the act of reporting, that is, obliging companies to disclose the presence of modern slavery in their supply chains and their efforts to detect, mitigate, eradicate and remediate it (Phillips et al., 2018; Mares, 2018). Transparency laws vary in scope but they typically have a narrow focus on specific issues such as forced labour or human trafficking (Salminen & Rajavuori, 2019). Through the mechanism of disclosure governments attempt to indirectly "influence normative practices" by "shaping the context in which society's various actors and subsystems interact and bargain with one another" (Barna, 2018, pp. 1458-1459). Transparency laws seek to mobilize investors and consumers due to their collective buying power which is viewed as powerful enough to change business practices (Mares, 2018; Barna, 2018). The desired effect is that investors and consumers, in response to supply chain abuses disclosed by companies, will boycott, social media shame and make investment and purchasing decisions which support clean companies and punish bad ones (Barna, 2018). These laws therefore depend on the reputational pressure placed on lead firms by investors and consumers to trigger companies to implement more impactful policies regarding modern slavery (Pinnington et al., 2022). These policies are then expected to trickle-down the supply chain to suppliers via contractual obligations (Pinnington et al., 2022). The stringency of transparency laws varies significantly. Less stringent disclosure laws impose no direct penalties for failure to report while more stringent laws impose fines for non-compliance with reporting requirements (Phillips et al., 2018).

Disclosure or transparency laws are considered the first generation of modern slavery laws and have been the preferred model of Anglo-American countries as evidenced by the California Transparency in Supply Chains Act (California Transparency Act) 2010, the UK Modern Slavery Act 2015 and the Australian Modern Slavery Act 2018. Canada followed in its Anglo allies' footsteps with the enactment of Bill S-211 in 2023. As discussed in Chapter Four, the Canadian law requires companies and government institutions to disclose steps taken to prevent goods made using forced or child labour being imported into Canada. The sanction for failing to comply with reporting requirements is a maximum fine of $250,000.00. Proponents of this model view transparency laws as a trigger for further regulatory changes (Mares, 2018). Although it is classed as the weakest of models, mandatory disclosure is seen as an important "break with voluntarism and a first step towards more stringent obligations on companies" (Mares, 2018, p. 195). As explained in Chapter Four, this was the view of Bill S-211's sponsors MP John McKay and Senator Julie Miville-Dechêne as well as CSO's such as World Vision. Following transparency as a first step, a possible next step is the enactment of due diligence legislation which is considered more robust than the transparency model.

Mandatory Human Rights Due Diligence Legislation

In contrast to transparency laws, mandatory human rights due diligence (MHRDD) legislation typically covers a wider range of harms including human rights, labour rights and environmental abuses (Salminen & Rajavuori, 2019; Evans, 2020). As noted in Chapter One, human rights due diligence (HRDD) stems from the UNGPs which, although not binding, has become the "global authoritative standard on business and human rights" (McCorquodale & Nolan, 2021, p. 456). Guiding Principle (GP) 17 of the UNGPs summarises the aim of MHRDD legislation which is for businesses to, "identify, prevent, mitigate and account for how they address their adverse human rights impacts" (United Nations, 2011, p. 17). The GP further

articulates four main steps that should be included in the process including "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed" (United Nations, 2011, p. 17). Although remediation is not directly included in the HRDD process, it is included as part of corporate responsibility to respect human rights via GP 22 which states that businesses "should provide for or cooperate in their remediation through legitimate processes" if they have caused or contributed to adverse impacts (United Nations, 2011, p. 24; Deva, 2023). Therefore, while transparency laws focus on reporting, MHRDD laws oblige businesses to conduct a set of interrelated processes aimed at collaborating with and protecting rights-holders (United Nations, 2011, p. 18; Deva, 2023).

MHRDD legislation is considered the second generation of modern slavery laws which improves upon the disclosure or transparency model and has been the dominant model adopted across Europe. Examples include the Norwegian Transparency Act 2021, the German Due Diligence in Supply Chains Act 2021, and Switzerland's Criminal Code reforms and Ordinance on Due Diligence and Reporting Obligations 2022. These laws vary in their requirements and stringency as "there is not one, single model" of a MHRDD regime and discussing these regimes means "potentially discussing a wide range of legal and regulatory possibilities" (United Nations, 2020, p. 1; Deva, 2023, p. 395). On the less stringent end MHRDD laws make due diligence processes, reporting and remediation of harm mandatory. More stringent laws make it obligatory for companies to consult with stakeholders to develop a due diligence plan and implement grievance mechanisms at the company level (Fudge et al., 2022). However, access to justice for victims of corporations which fail to effectively conduct due diligence processes remains ill-defined in some HRDD legislation (ECCJ, 2018). Hence the distinct, emerging category of MHRDD laws with civil liability and remedy for victims.

Mandatory Human Rights Due Diligence Legislation with Civil Liability

MHRDD legislation with civil liability is the third generation of laws which moves a step beyond the second model by imposing liability for negligence on companies which have been found to contribute to breaches of human or environmental rights in business relations. They establish a duty of care, that is, "a legal obligation to adhere to a standard of reasonable care" when carrying out acts which could foreseeably result in harm to human rights or the environment (Cossart et al., 2017, pp. 318-319). The victims harmed as a result may in turn bring civil (tort) action to claim remedy (Cossart et al., 2017). The French Corporate Duty of Vigilance Law 2017 is an example of imposing civil liability when a company fails to act with due diligence. The French law is the "best known and most far reaching" regime of MHRDD (Savourey & Brabant, 2021, p. 141). Companies covered under the law must, in line with the UNGPs, implement and report annually on a vigilance plan (Nolan & Bott, 2018). This plan entails risk mapping, that is, identifying, analyzing and ranking supply chain risks; regularly assessing subcontractors and suppliers' actions regarding human rights violations; developing reporting mechanisms in conjunction with trade unions; and monitoring the efficiency of the mechanisms and measures put in place (Barna, 2018). The law provides victims and private parties a right of action against companies which fail to comply (Barna, 2018).

This model is also used in the European Union Corporate Sustainability Due Diligence Directive (EU Directive) passed in May 2024. Switzerland's Responsible Business Initiative (RBI) also proposed this model, but the RBI failed to pass a national referendum in 2020 (Bueno & Kaufmann, 2021). The RBI, however, went a step further than the French law by reversing the burden of proof from the victims to companies, meaning that companies would be liable unless they could prove they took all due care to prevent harm (Cossart et al., 2017). A reverse burden of proof provision was also proposed in the initial draft of the French law but was later removed due to intense business lobbying (Cossart et al., 2017).

MHRDD with civil liability is therefore presently the most robust model of modern slavery legislation. As discussed in Chapter Four, NDP MP Peter Julian's legislative proposal for Canada's modern slavery act, Bill C-262 developed in conjunction with the CNCA, was a MHRDD bill with civil liability. The components of the bill included a duty to avoid adverse impacts on human rights, including environmental abuses, by conducting due diligence processes. The bill also included a private right of action in a Canadian court and a defence for companies that can establish they exercised all due diligence to prevent adverse impacts. Support for this proposal was minimal in comparison to Bill S-211. This typology therefore identified three main categories of modern slavery laws and Canada's modern slavery act has been situated in the transparency category. While transparency laws are considered the weakest and MHRDD with civil liability the strongest on the spectrum, all models have faced criticism and emerging evidence shows that they do not effectively increase corporate accountability or improve labour standards for supply chain workers.

Critique of Modern Slavery Laws

The Transparency Model and Cosmetic Compliance

The transparency model has been criticised for overestimating the leverage of consumers and investors to modify corporate conduct (Mares, 2018). More recent transparency laws passed after the California and UK acts, such as the Australian act, are more stipulative about the content of reports (see **Appendix 1: *Table 2*** for a summary of the UK and Australian laws). The mandatory reporting criteria of Canada's transparency act also sets a high water mark. However, informational asymmetry is created as a result of company disclosures being heavily biased towards reporting mainly positive aspects of business operations as well as withholding from the public what can be classed as sensitive commercial information regarding

their supply chains (Mares, 2018). Furthermore, independent verification of reports is not a requirement in some disclosure regimes and questions regarding the veracity and reliability of what is disclosed can arise (Mares, 2018). Tests conducted to gauge consumer comprehension of mandated disclosures under the California and UK acts found that the reports did not assist consumers in determining which companies were making comprehensive efforts to ensure that their supply chains were free from modern slavery (Chilton & Sarfaty, 2016). Emphasizing the unrealistic responsibility placed on the public, Senior Associate at Dentons Canada, Sean Stephenson, noted that "the public is not going to be reading reports filed with parliament" to determine which businesses they should financially support (S. Stephenson, personal communication, November 12, 2021). This reliance on the public to pressure business is viewed as an inherent flaw in transparency legislation.

A similar critique levelled against disclosure regimes is that of "cosmetic compliance" (Landau, 2019). This means that the design of transparency laws makes it possible for companies to take a tick-box approach to reporting by "incorporating key words and generic language without providing substantive or meaningful information" (BHRRC, 2016, p. 13). Examples of box ticking criteria include clauses prohibiting the use of forced labour in supplier contracts and conducting audits (Smit et al., 2023). Director of Above Ground Karen Hamilton commented that this box ticking exercise is "the equivalent of greenwashing" where companies claim to be adhering to these criteria yet "continue to be involved in a lot of activities that are harmful" (K. Hamilton, personal communication, December 8, 2021). This symbolic rather than substantive reporting was confirmed by studies investigating reports filed under the California and UK acts (BHRRC, 2016; Bardwell & Carrier, 2017; Birkey et al., 2018). As discussed in Chapter One, mandated disclosure regimes are reflexive in nature and aim to encourage self-corrective internal decision-making and ultimately behavioural changes in corporations (Wen, 2016). However, while these laws oblige companies to be more transparent,

companies are not actually changing their conduct to address or prevent human rights violations as the legislation envisioned (Mares, 2018).

In addition to box-ticking, companies often report on the lack of forced labour and other abuses in the first or second tiers of their supply chain when violations usually occur in the lower tiers of supply chains where subcontracting is common (Phillips et al., 2018; Barna, 2018). Commenting on companies not looking beyond their direct suppliers in the first tier of the supply chain, Senior Child Labour Specialist at the ILO Benjamin Smith stated that "with child labour in particular the higher risk is further upstream in the production of primary goods…several tiers below the first tier of production" (B. Smith, personal communication, January 10, 2022). This is closely related to the most frequent criticism of transparency legislation which is that there is no sanction for failing to take steps to ensure no abuses throughout the supply chain, only for failing to *disclose* whether steps were taken (Nolan & Bott, 2018). Transparency law sanctions tend to be limited to injunctions and fines for failing to report but typically contain no right of action for consumers or victims to seek redress. The California and UK acts provide injunctive relief for non-compliance but no financial penalties or a right to remedy (Barna, 2018). Although Canada's Modern Slavery Act contains financial penalties, like the California and UK acts companies are not mandated to conduct due diligence and there are no penalties for failing to implement effective supply chain practices (Nolan & Bott, 2018).

The lack of a civil right of action is compounded by concerns that disclosure laws can trigger the safe harbour doctrine for companies. The term "safe harbour" is used to describe "specific conditions which, if met, exempts an entity from liability" (Smit et al., 2023, p. 4). These conditions are usually set out or implied in statute and once met by the company it is automatically exempt from liability in terms of that statute (Smit et al., 2023). These safe harbour concerns were realised in cases such as *Barber v. Nestlé USA Inc* 154 F. Supp. 3d 954

(C.D. Cal. 2015), one of several based on alleged violations of California's consumer protection laws. The plaintiffs claimed that Nestlé had failed to inform consumers that its cat food products may contain seafood sourced using forced labour. Nestlé argued that a safe harbour from the claim had been created by the California Transparency Act which mandates companies to disclose on their websites specific information about efforts to eradicate slavery and human trafficking from their supply chains (Barna, 2018; Smit et al., 2023). Mandatory information includes verification of supply chains to evaluate the risk of slavery and trafficking, conducting supplier audits and maintaining internal accountability procedures for employees and contractors who fail to meet required standards. The law does not mandate companies to perform these tasks, only disclose whether they do them or not.

The court agreed that Nestlé met the limited disclosure requirements mandated under the California Transparency Act and the information required by the plaintiffs was additional to what the Act required (Smit et al., 2023). The court stated that because the California legislature had considered the extent of the disclosures required when it adopted the California Transparency Act and Nestlé had complied with those specific requirements, the claim was barred by the safe harbour doctrine (Barna, 2018; Smit et al., 2023).

Taken together these criticisms point to transparency laws being "image oriented rather than outcome oriented" (Pinnington et al., 2022, p. 3). This means that they are just a form of whitewashing for companies. Additionally, since the success of model this relies on public scrutiny, it only works for consumer facing businesses (Nolan & Bott, 2018, p. 57-58). Based on these limitations of transparency legislation, advocates of more stringent models support legislation which mandates companies to conduct human rights due diligence, creates civil liability and provides access to remedies for victims (Mares, 2018). The MHRDD model however has also garnered much criticism.

Mandatory Human Rights Due Diligence Legislation: The Solution to Cosmetic Compliance?

The increasing number of MHRDD legislative proposals introduced in various jurisdictions, but most notably Europe, have been supported by civil society and trade unions as well as a growing number of industry associations and businesses (Smit, 2023). If conducted regularly and in a meaningful manner, MHRDD should pre-empt many instances of corporate human rights abuses. However, the design of these laws and the way companies conduct HRDD in practice tends to perpetuate the issue of cosmetic compliance and exacerbate the imbalance of power between companies and rights-holders (Deva, 2023). The HRDD process is meant to be ongoing collaboration with rights-holders. However it is often the case that "rightsholders at risk are only expected to be consulted as passive participants, rather than being active agents" (Deva, 2023, p. 399). Furthermore, the consultation process is designed by the party in the position of power which is the company or a third party consultant engaged by the company. This can create an imbalance of power and an asymmetry regarding information and resources where affected workers and communities may not be able to effectively participate. The cosmetic nature of the process is often evidenced when development projects proceed despite most of the affected community being against it (Deva, 2023). There is therefore more of a focus on the process of MHRDD as a self-legitimizing tool as opposed to an outcome which protects those affected.

The over reliance by companies on social audits when conducting MHRDD has also been problematic. HRDD is meant to be a "holistic and ongoing process that extends well beyond workplace audits" (McCorquodale & Nolan, 2021, p. 475). However, supplier audits are most frequently used to identify human rights risks (Ford & Nolan, 2020; McCorquodale & Nolan, 2021). As discussed in Chapter One, the information obtained from audits is often unreliable due to practices such as suppliers cleaning up facilities prior to planned inspections

(Ford & Nolan, 2020). Audits tend to be short, superficial checklist exercises which capture a snapshot in time and rarely investigate lower tiers of the supply chain where workers are more vulnerable to abuses (Ford & Nolan, 2020). Genuine engagement with workers, trade unions and CSOs is more likely to expose hidden violations as opposed to a box-ticking audit (Ford & Nolan, 2020; Barrientos & Smith, 2007). Bill C-262 included a duty to consult with directly affected individuals, employees and trade unions when developing and implementing due diligence procedures. The French Corporate Duty of Vigilance Law 2017 mandates that an alert system for collecting reports pertaining to the existence or occurrence of risk must be established in consultation with the representative trade union of the relevant company. These provisions aim to have ongoing worker and worker representative engagement throughout the MHRDD process but this remains a largely aspirational requirement due to the continued reliance on audits.

Additionally, audits only focus on the symptoms of human rights violations like forced overtime and wage discrepancies but not their root causes such as the purchasing practices of lead firms in the apparel industry which places downward pressure on suppliers and in turn affects the workers on the bottom (Anner et al., 2013). Lead firms have shown little willingness to significantly alter their sourcing practices and tick-box audits are unlikely to catalyse the "internal learning and continuous improvement around substantive human rights prevention and protection" which is the aim of these reflexive laws (Ford & Nolan, 2020, p. 35). Auditing should therefore not be relied on as a substitute for a broader MHRDD program.

Another criticism of MHRDD legislation and the UNGPs in general is that they do not challenge "the existing structure of irresponsibility and inequality utilized by businesses to their advantage" (Deva, 2023, p. 401). Companies for instance use their overseas subsidiaries to avoid responsibility for human rights abuses. As discussed in Chapter One, legal doctrines such as separate legal personality, which deems MNCs separate legal entities from their subsidiaries

and contractors, provides MNCs protection from liability (Ruggie, 2014; Fudge & Mundlak, 2023). MHRDD can therefore be perceived as providing a tool for companies to make some changes to their business models but not so much as to disrupt the current economic and structural order (Deva, 2023). Additionally because the concepts of mitigation and prevention are used interchangeably with no clear hierarchy, companies may feel justified in contributing to adverse human rights impacts once they mitigate or remediate these impacts later (Deva, 2023). This is because on a cost benefit analysis, mitigation may be more preferable than prevention which may require ceasing business activities altogether. There are also situations where conducting HRDD is not feasible or human rights violations may occur despite conducting due diligence. For example companies operating in the Xinjiang province of China may not be able to meaningfully consult with all the stakeholders involved in allegations of forced labour involving the Uyghurs (Deva, 2023).There should therefore be "red lines" specified in MHRDD legislation, that is, business activities should not be conducted in certain markets or companies should responsibly disengage where it is not realistic to respect all human rights (Deva, 2023, p. 406).

Regarding civil liability regimes such as in the French Duty of Vigilance Law, the burden of proof is on the claimant, that is, they must prove the causal link between the company's breach and the damage suffered (Savourey & Brabant, 2021). This is difficult to prove the more remote the damage is along the supply chain and also due to "material, social, institutional and linguistic circumstances" which may inhibit victims from taking legal action before French courts (Brabant & Savourey, 2017, p. 3; Savourey & Brabant, 2021). For this reason French NGOs such as Sherpa and its associates continue to advocate for the reversal of burden of proof from victims, such as indigenous communities, to companies as initially envisioned in the first proposal of the French law (Cossart et al., 2017).

A related concern is that companies can also potentially be shielded from liability if conducting MHRDD is seen by the courts as a safe harbour (Smit, 2023). The EU Directive for instance allows a company to defend itself by showing that it has met the required legal standard of care by conducting MHRDD. However, in a study of the EU Directive, civil society organizations expressed concerns about this defence being equated with the concept of a safe harbour (Smit, 2023). While a due diligence defence still "requires a company to demonstrate the quality of its due diligence" in court, a safe harbour "excludes such an enquiry from taking place" solely based on the company having met the requirement to conduct MHRDD, no matter the quality (Smit, 2023, p. 4). The UNGPs clearly state that conducting due diligence by itself will not "automatically and fully absolve [companies] from liability for causing or contributing to human rights abuses" (United Nations, 2011, p. 19). It is essential therefore that the two concepts are not used synonymously.

Finally, the MHRDD process is often faulted for its lack of emphasis on remediation, which is not directly included in the four step process outlined in Principle 17 of the UNGPs (Deva, 2023). However, remediation should not just be reserved for instances where mitigation or prevention fails. Remediation should be triggered when companies fail to conduct MHRDD or do so in a tick-box manner (Deva, 2023).

Despite the faults of MHRDD, Senior Program Officer at Maquila Solidarity Network, Caren Weisbart, defended this model over transparency legislation stating that "it's important to recognize that with MHRDD legislation a company can still do a bad job of being duly diligent" but said company "can be held accountable, and civil liability is a big component of that which is key" (C. Weisbart, personal communication, February 25, 2022). For this reason, MHRDD with civil liability, despite its shortcomings, is now globally regarded as the gold standard of modern slavery legislation. Even Walk Free, which initially supported transparency legislation, has urged Australia to strengthen its modern slavery act to include due diligence

obligations in the wake of the EU Directive's passage (Walk Free Foundation, 2024). Walk Free's aim is to maintain Australia's trade relationship with the EU by implementing the same standards regarding foreign corporate accountability, and possibly becoming a preferred supplier to the EU as well (Walk Free Foundation, 2024). The idea that there should be a level legislative playing field is also at work.

MHRDD legislation is far from a perfect solution for strengthening corporate accountability for human rights abuses and even the landmark French Duty of Vigilance Law has been described as "just a starting point for hardening foreign corporate accountability" (Schilling-Vacaflor, 2021, p. 123). While MHRDD legislation may be regarded cosmetic if it is utilised in a way which only makes superficial adjustments to the current economic system, greater involvement of workers and other stakeholders in monitoring labour standards in supply chains, a reduction of the reliance on audits and drawing red lines would be a start to combatting allegations of cosmetic compliance.

Although Canada has enacted a transparency modern slavery law, the Liberal government announced in its 2023 and 2024 budgets an intention to introduce MHRDD legislation. However, even if Canada does enact MHRDD legislation as expected, MHDD "should not end up becoming the end in itself" and should be "treated merely as one of many means to ensure that businesses respect internationally recognized human rights" (Deva, 2023, p. 3). Various jurisdictions are adopting a multi-layered regulatory response, with "the gold standard being a tripartite of tariff, transparency and MHRDD legislation" at the forefront, as noted by founder and CEO of Unseen UK Andrew Wallis OBE (personal communication, November 4, 2021). Canada is already on the right track in this regard as it has implemented other regulatory initiatives such as the non-judicial state mechanism CORE and a forced and child labour import ban alongside voluntary CSR initiatives and transparency legislation,

which should ideally strengthen its regulatory response. It is debatable however whether this is the case.

Canada's Hardening and Layering of Regulatory Mechanisms to Combat Modern Slavery

With the intent of strengthening its regulatory response to forced labour in supply chains, Canada has layered onto CSR initiatives and its transparency law, CORE and a forced labour import ban. However, it is questionable whether these regulatory tools work to complement each other or are inadvertently displacing each other in practice. As discussed in Chapter Four, the Liberal government failed to make CORE an independent investigatory office with the power to compel witnesses and documents (Global Affairs Canada, 2019). Instead the ombudsperson can only make recommendations including withdrawal of financial support from companies failing to act in good faith during the review, and after the review financial compensation, a formal apology or changes to a Canadian company's policies (Government of Canada, 2019(b)). The ombudsperson cannot enforce any of its recommendations which has led to civil society deeming it a toothless office (CNCA, 2019(a)). CORE can also refer a matter to the National Contact Point (NCP) if it falls more within that office's mandate but this office has also been long regarded as ineffective (OECD Watch, 2015). CORE is a hard law mechanism in the sense that it was established through law, that is an order-in-council, but its recommendations are not legally binding making it more comparable to a soft law mechanism.

The way in which CORE interacts or can potentially interact with the other regulatory tools Canada has implemented is unclear. In the case of litigation for instance, if a company fails to follow CORE's recommendations following an investigation, plaintiffs can potentially use this in tort claims to reinforce other claims of wrongdoing by the company (Simons, 2023).

Similarly, if Canada adopted a MHRDD legislation with civil liability in the future, plaintiffs could potentially use CORE's recommendations in the same way. However, CORE's findings from an investigation would likely not constitute admissible evidence and it is "unclear whether the ombudsperson could be compelled to appear as a witness" (Simons, 2023, p. 278). It is therefore unclear how much complementarity there would be between the judicial system and a non-judicial state mechanism like CORE in terms of securing remedy for victims.

CORE's interaction with Canada's forced labour import ban also lacks clarity. As explained in Chapter Four, the forced labour import ban was a requirement of the Canada-USA-Mexico Agreement (CUSMA) 2020. It was implemented into Canadian law via an amendment to the Customs Tariff Act 1997 and later expanded when Bill S-211 was passed to include a prohibition on importation of goods produced using child labour as well. CORE receives complaints from the public or can initiate its own investigations into companies suspected of using forced labour. In contrast, Canada Border Services Agency (CBSA) works closely with Employment and Social Development Canada (ESDC) which researches and complies evidence of goods being produced with forced labour and transmits these findings to CBSA. While CORE targets Canadian MNCs and the import ban is wider in that it targets foreign suppliers, there should be a closer working relationship between CORE and the CBSA as the exchange of information regarding companies suspected of using forced labour would be beneficial to both. This separation between CORE and the enforcement of the import ban is further compounded by the fact that CORE's scope is limited to the extractive and garment sectors while the import ban covers all industries. While CORE's scope can be explained by the Canada's historical efforts to regulate the mining industry, the office would be much more useful if it covered all industries. UN Special Rapporteur Tomoya Obokata, in addition to supporting CORE being given all relevant powers, recommended that CORE be expanded "to

include all sectors" (Obokata, 2023, p. 10). This could assist in bridging the communication gap and enriching information exchange between CORE and the CBSA.

In 2023 CORE launched investigations into several Canadian companies including Nike Canada Corp., and Dynasty Gold Corporation in connection with allegations of the use of Uyghur forced labour. While CORE lacks the authority to impose remedies or implement an import ban, findings from its reports after these investigations could potentially be used to by CBSA to determine what imports may have been made using force labour. An expansion of CORE to cover all sectors and more communication with the CBSA could therefore strengthen the CBSA's ability to better utilise import bans. The CBSA to date has only detained one shipment in 2020 suspected of forced labour which was ultimately released and allowed into Canada after the company provided satisfactory documentation (Chase, 2022). In contrast 1469 shipments were detained in the USA by Customs and Border Protection (CBP) in 2021 (The Human Trafficking Legal Center, 2024). Greater co-operation between CORE and the CBSA, with improvements to both, can therefore result in greater utilisation of import bans in Canada.

Import bans are a hard law regulatory tool implemented thus far only in the USA, Canada and Mexico, although the EU has adopted a similar type of regulation, and an import ban is being contemplated and recommended in the UK and Australia (Carrier, 2021; Sinclair & Dinshaw, 2022; Jacob et al., 2022). However, such bans on the import of goods made with forced labour must be carefully designed and implemented to avoid loopholes as well as disastrous consequences for workers. For instance importers whose shipments get blocked in one country can re-export their goods to countries with no forced labour ban or weaker enforcement of import controls, which has happened when goods banned form the USA have entered Canada (Blackwell, 2021). Human Rights and Trade Policy Director at The Human Trafficking Legal Center, Anasuya Syam, explained that once a Withhold Release Order (WRO) has been issued by the USA to stop a shipment, it is most convenient for importers to

ship implicated goods "around the border to Canada or Mexico as opposed to shipping it across the sea again" (A. Syam, personal communication, February 11, 2022). It is therefore crucial that the USA, Canada and Mexico "work in partnership to monitor the cross-border movement of products" (A. Syam, personal communication, February 11, 2022). Import bans can also cause unintended consequences when utilised alongside MHRDD legislation, which the Liberal government is proposing to enact. Companies can diversify and increase their suppliers in a bid to minimise the threat of import bans, which would in turn undermine MHRDD laws as they become less effective the more complex the supply chain (Fudge & LeBaron, 2024).

The greatest threat to supply chain workers, however, is that brands or importers will cut ties with a supplier completely if a shipment is implicated in the use of forced labour. This could lead to the elimination of jobs for numerous workers and also an inadvertent increase in forced labour in sectors unaffected by the restrictions (Ryngaert, 2019; Jacob et al., 2022). An import ban should therefore be designed to prioritise collaboration with relevant stakeholders and remediation, following which the ban is lifted. An example of an import ban almost having disastrous consequences for workers occurred on July 20, 2022 the USA's CBP issued a WRO against Natchi Apparels in Dindigul, Tamil Nadu located in India, and other units of Eastman Exports, its parent company. The order was successfully withdrawn in September, 2022 after Tamil Nadu Textile and Common Labour Union (TTCU) along with Asia Floor Wage Alliance (AFWA) and the Global Labor Justice-International Labor Rights Forum (GLJ-ILRF), showed evidence of remediation around all indicators of forced labour identified by the ILO via the Dindigul Agreement to Eliminate Gender-Based Violence and Harassment signed three months before the WRO (Asia Floor Wage, 2022).

The import ban, therefore, threatened to turn brands against the suppliers after all the hard work put into remediation. Nothing in the law mandated that workers be protected or that the impacts of the WRO be remediated reflecting that the ban's purpose is geared more towards

protection of the USA's internal market (Fudge & LeBaron, 2024). Canada should learn from this incident and amend its import ban to center around collaboration and remediation. Furthermore, the law should make it clear that the remediation is the financial responsibility of the importers and not solely the local suppliers (LaFianza, 2022; Bengsten, 2021).

The Liberal government clearly intended to strengthen Canada's response to modern slavery in supply chains by layering multiple regulatory mechanisms on top of or alongside voluntary CSR initiatives, such as transparency legislation, CORE and an import ban with the latter two initiatives showing an escalation in hard law techniques. However, this section has illustrated that these regulatory tools do not always complement each other, particularly when they are drafted or designed in an imprecise manner without enough consideration as to how they can potentially displace other existing mechanisms. Instead of making Canada's regulatory response stronger, the unintended consequences of layering these techniques might actually be weakening the effectiveness of Canada's response. This does not mean that increasing levels of government intervention as recommended in the responsive regulation model is flawed. Increased hardening and layering of various techniques can work once they are properly designed so that one mechanism is not undermining the effect of another and they all work in tandem to achieve the aim of eradicating modern slavery in supply chains. In addition to these techniques being used in Canada, there are regulatory mechanisms such as worker-driven social responsibility and joint and several liability being utilised in other jurisdictions. The next section will outline these techniques and discuss the lessons Canada can incorporate into its own regulatory strategy.

Joint and Several Liability and Worker-Driven Social Responsibility

The legal doctrine of joint and several liability and the concept of worker-driven social responsibility (WSR) are two regulatory initiatives which have been utilized in various

jurisdictions and can shed some light on how Canada can improve its regulatory response. Joint and several liability refers to a situation "when more than one defendant has tortiously contributed to the same injury" and "each tortfeasor is held jointly and severally liable for the entire injury" (Wright, 1988, p. 1141). Companies rely on the defence of privity of contract, that is, a lack of a contractual relationship with subcontractors and lack of a direct employment relationship with supply chain workers, to protect themselves from liability for human rights abuses committed in their supply chains (Beale, 2012; Ogilvie, 2015; Fudge & Mundlak, 2023). However, in an example of joint corporate liability, a court in Belgium extended liability for trafficking of workers to a company housing the workers even though the company claimed it was in no direct or indirect employment relationship with the workers and had no knowledge of the forced labour occurring (Case No. 2012/3925 First Instance Court of Gent, 2012). While joint and several liability directly challenges legal defences such as privity of contract and separate legal personality, modern slavery legislation does nothing to interfere with these protections. If the Liberal government's aim is to protect supply chain workers and eradicate modern slavery, they need to consider whether a MHRDD law which does not address these legal protections for companies is the best course of action.

The WSR model consists of worker-driven programs designed to directly empower workers and is a complete contrast to CSR which is often whitewashing for companies. The model includes legally binding agreements between brands and worker organizations where the brands commit to providing financial support to suppliers to assist them in meeting the required labour standards, and to cease doing business with suppliers who do not adhere to the agreement (WSR Network, 2017). Workers are given a voice in the protection of their own rights which includes being educated about their rights under the program and establishing a complaint mechanism which ensures quick and effective action when workers identify violations of their rights (WSR Network, 2017). Examples include the Bangladesh Accord on

Fire and Building Safety (the Accord) which was implemented after the collapse of Rana Plaza, and the Dindigul Agreement discussed in the previous section.

The WSR network, comprised of some of the organizations which have pioneered WSR agreements, identifies six principles which are indicative of WSR agreements: (1) labour rights initiatives must be worker-driven; (2) obligations for global corporations must be binding and enforceable; (3) buyers must afford suppliers the financial incentive and capacity to comply; (4) consequences for non-compliant suppliers must be mandatory; (5) gains for workers must be measurable and timely; and (6) verification of workplace compliance must be rigorous (WSR, 2017; Fudge & LeBaron, 2024). The first and sixth principles in particular focus on the ways in workers can be better integrated into the design, monitoring, enforcement and remediation processes in modern slavery legislation as well as forced labour import bans.

Regarding the first principle, because supply chain workers have the strongest and most abiding interest in protecting their own rights, it is imperative that they and their representative organizations— such as global and national trade unions— be at the head of the table in creating and implementing the program, including its priorities, design, monitoring and enforcement (WSR Network, 2017). This is exemplified by the Bangladesh Accord where global labour unions such as IndustriALL, and worker organizations including the Worker Rights Consortium (WRC) and the Clean Clothes Campaign, were involved in negotiating the terms of the Accord and its subsequent worker-driven monitoring (Donaghey & Reinecke, 2018; Outhwaite & Martin-Ortega, 2019). The Accord mandates basic safety training for workers so that they can voice concerns and thereby actively participate in ensuring their own safety (Outhwaite & Martin-Ortega, 2019). Rather than social audits being the only time workers had a voice (which is often constrained in interviews held in a factory/workplace setting), field workers were employed and trained by the Accord, and "worked proactively with union leaders to participate in inspections and obtain copies of inspection reports, made

available in the local language" (Outhwaite & Martin-Ortega, 2019, p. 388). Informed workers were also able to get Accord case workers to intervene in instances where management refused local union participation in inspections (Outhwaite & Martin-Ortega, 2019).

The WRC model of worker-driven monitoring has been highly rated. The process includes interviewing workers in their homes or communities and not the factories, as well as local government labour authorities, plant managers, any other relevant parties, and inspecting relevant records or documents where allowed by factory managers (Outhwaite & Martin-Ortega, 2019). The sixth principle of the WSR Network explains that effective worker education which "enables workers to function as partners with outside inspectors" and "in-depth worker interviews, carried out under conditions where workers can speak freely", is a central component of verifying supplier compliance (WSR Network, 2017, p. 4).

The Bangladesh Accord uses the term "credible inspections" to refer to such worker-driven monitoring and inspections, and to distinguish them from social audits (Outhwaite & Martin-Ortega, 2019, p. 389). Donaghey & Reinecke (2018, p. 29) noted that "for a local union president "to be seen walking through the factory with those inspectors" was considered a powerful demonstration that workers were eligible to speak on the same level with outside authorities and managers." Furthermore, the Accord requires inspections to be carried out by independent safety inspectors (Outhwaite & Martin-Ortega, 2019). This aligns with the sixth principle of the WSR Network which states that inspectors must have in-depth knowledge of the relevant industry and associated labour issues, and "operate independently of financial control and influence by buyers" and suppliers, in contrast to social audits (WSR Network, 2017, p. 4). A proactive, worker-driven monitoring and inspection process can therefore prevent the conflict of interest that that occurs with in-house and third party monitoring.

The sixth WSR Network principle states that "a complaint resolution mechanism that operates independently of buyers and suppliers and in which worker organizations play a

central role" is important (WSR Network, 2017, p. 4). The Bangladesh Accord mandates that a worker complaint system, which maintains confidentiality, is implemented which ensures that workers can raise health and safety concerns in a timely manner (Outhwaite & Martin-Ortega, 2019). Regarding remediation, where factory closures or any corrective action is taken, reasonable efforts must be made by buyers to ensure that workers who lose their employment are offered alternative, safe employment, and workers can refuse work they believe to be unsafe without negative consequences to their employment status (Outhwaite & Martin-Ortega, 2019). The Accord also provides for workers to receive compensation beyond the amount set out in domestic legislation, and they play a role in negotiating it (Outhwaite & Martin-Ortega, 2019). Regarding enforcement, disputes regarding labour rights violations are settled via binding arbitration, enforceable in the home country of the buyer against whom proceedings were brought. Arbitration awards are enforceable under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, to which all the signatory countries of the Accord are party (Outhwaite & Martin-Ortega, 2019). Walk Free is an advocate of WSR, acknowledging the progress made in improving worker safety due to the Bangladesh Accord but noted that more initiatives focused on excessive working hours and low wages are needed (Walk Free Foundation, 2020).

A common thread with all Canada's regulatory mechanisms is the lack of worker voice. There is not enough collaboration between companies, workers and other relevant stakeholders. As former Head of Modern Slavery Strategy at ETI, Cindy Berman stated "workers have rights and are not simply to be regarded as victims to be rescued, nor to be the subject of philanthropic efforts by companies" (C. Berman, personal communication, December 21, 2021). Unless Canada makes an effort to ensure worker involvement, including in the due diligence process required with a future MHRDD law, then all efforts to eliminate modern slavery in supply chains will appear to be cosmetic.

Conclusion

This Chapter addressed research question three by exploring the various regulatory mechanisms being utilised in Canada, and how they interact with each other with the aim of eradicating modern slavery practices such as forced labour from global supply chains. The first half of the Chapter focused on constructing a typology of modern slavery laws and situating Canada's legislation within that typology. Canada's *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, although more stipulative about the reporting criteria than the California and UK acts, is of the first generation, transparency variety which is considered the weakest of the legislative models. Due to the fact that companies only need to disclose whether or not they have undertaken steps to ensure there is no modern slavery in their supply chains, transparency legislation often leads to a tick-box approach. The Liberal government has announced its intention to enact MHRDD legislation, the second generation of modern slavery laws, which is globally considered to be the more robust than the transparency model. This is evident in Walk Free's support for transparency laws to be transitioned into MHRDD legislation. However, even this model, with the addition of a civil liability regime, has faced criticisms of cosmetic compliance as companies often fail to collaborate with workers and other rights-holders on an ongoing basis as the due diligence process requires. Crucially both transparency and MHRDD laws have the potential to trigger the safe harbour doctrine which shields companies from liability for human rights abuses in their supply chains. This means that there is potential for displacement of transnational litigation by the laws if they are not precisely drafted.

Canada has layered other regulatory techniques alongside voluntary CSR initiatives and modern slavery legislation including state mechanisms CORE, and a forced and child labour import ban. This hardening and layering of regulatory tools should be strengthening Canada's response to modern slavery but the inadvertent displacement of one technique by another is

actually having the opposite effect. While the recommendations of CORE could be useful in litigation to add evidence of a company's history of wrongdoings, CORE's findings are unlikely to be admissible as evidence in Court. CORE should be amended to include all sectors and should have more of a communication with CBSA in the implementation of import bans. Import bans and a potential MHRDD law may also lack complementarity as importers increase their suppliers to avoid import bans and in turn make conducting MHRDD more complex. The design of import bans themselves in the USA and Canada do not sufficiently prioritise remediation which allows importers to sever ties with suppliers, potentially leaving workers without jobs and in an even more precarious situation.

What Canada can learn from other jurisdictions utilising doctrines such as joint and several liability and WSR is the importance of prioritising workers at every step of the regulatory process or risk further weakening its regulatory response to modern slavery. The Liberal government must prioritise workers whether they enact a new MHRDD law or amend the current modern slavery act which could indeed be a first step to MHRDD legislation due to its stipulative nature. Whether it is a first step or dead end however, depends on the outcome of the next federal election, which must happen in 2025 at the latest. The possibility of it being a dead end for MHRDD legislation greatly increases if the Conservatives emerge victorious. The following chapter will discuss the findings and themes which emerged throughout the thesis and conclude.

Conclusion

> There's not a lot of evidence that supply chain legislation has moved the needle and actually delivered improvements with respect to labour rights in supply chains.
>
> —Benjamin Smith, International Labour Organization, *personal communication, 2022*

This thesis found that Canada adopted transparency modern slavery legislation due to a combination of international norm diffusion via an epistemic, global anti-slavery network, and Canada's unique domestic political economy. Furthermore, Canada's layering of increasingly hard law governance and regulatory mechanisms is currently weakening its overall response to modern slavery and forced labour in global supply chains (GSCs), rather than strengthening it as intended. These findings were obtained using three research questions: (1) What are the range of governance and regulatory techniques devised to combat modern slavery in global supply chains?; (2) What factors influenced the introduction of modern slavery transparency legislation into the Canadian parliament to combat forced labour in supply chains?; and (3) Where is Canada situated in the landscape of emerging regulatory techniques to combat forced labour in supply chains?

In order to answer these multi-scalar research questions, the main contribution of the thesis was bringing together two sets of literatures, that is, global governance and regulation literature, and literature regarding the national institutionalization of global norms, to form a comprehensive theoretical framework. Global governance and regulation literature, and new governance theory in particular, was essential to answer question one as it explained the techniques being utilized globally and in Canada to tackle the transnational labour issue of forced labour in GSCs. These techniques were discussed in Chapter One. They include transparency legislation such as Canada's *Fighting Against Forced Labour and Child Labour in Supply Chains Act* 2023 (Bill S-211), and mandatory human rights due diligence (MHRDD)

legislation, which are reflexive hard laws. Home states use these laws to prompt multinational corporations (MNCs) to implement self-corrective measures to address the use of forced labour in their GSCs. These laws are also emblematic of responsive regulation as they represent an escalation in the response of home states to the failure of corporate social responsibility (CSR) initiatives, such as supplier codes of conduct, certification schemes, social audits, and soft law guidelines such as the United Nations Guiding Principles on Business and Human Rights (UNGPs) to increase corporate transparency and accountability. The failure of CSR initiatives to protect workers was evident with the collapse of Rana Plaza, after which there was an increase in mandatory disclosure and hard law in home states.

In addition to reflexive hard law, Canada has implemented hard law in the form of a forced labour import ban, which was a condition imposed by the United States of America (USA) as a requirement of the Canada-United States-Mexico Agreement (CUSMA). A ban on products produced with child labour was later added with the passage of Bill S-211. The Supreme Court's decision in the transnational litigation case *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, that MNCs could be sued under customary international law for tortious harms caused by their subsidiaries, also represented an escalation in Canada's response to modern slavery and forced labour in GSCs. Crucially, this thesis found that this escalation in hard law techniques is not actually displacing any of the softer techniques. Instead, the increasingly harder techniques are being layered over the softer ones in an attempt by Canada, and other home states with similar multi-faceted strategies to combat modern slavery in GSCs, to strengthen its regulatory response by using multiple initiatives.

A significant contribution of this thesis, and partial answer to research question two, was the role of international norm diffusion in transparency legislation being tabled in the Canadian parliament. In Chapter One, global governance and regulation literature also explained the formation of the epistemic, global anti-slavery network comprised of actors such

as states, business associations, academic institutions, and international organizations such as Walk Free, the United Nations (UN) and the Organisation for Economic Co-operation and Development (OECD). Through the process of international norm diffusion, these network actors disseminate anti-slavery and corporate accountability (namely foreign corporate accountability (FCA)) norms, and thereby influence the domestic legislative process in various states, and specifically in Canada. The anti-slavery network, formalized into Alliance 8.7, disseminates anti-slavery and FCA norms via soft law such as the UNGPs, which outlines the human rights due diligence (HRDD) process companies are encouraged to implement to identify, mitigate, prevent, and remediate human rights abuses in their supply chains. However, the HRDD process, which is inherently ambiguous regarding its purpose as a tool for business risk management or worker rights and empowerment, has been translated in different jurisdictions into either transparency or MHRDD legislation. Primarily Anglo-American jurisdictions, including Canada, have adopted the former and much of Europe has adopted the latter. This was partly explained by differing views among network members regarding transparency and MHRDD legislation.

As noted in Chapter Two, organizations comprising the global anti-slavery network function as regulatory intermediaries by encouraging home states to enact modern slavery legislation to alter the corporate practices of MNCs regarding the use of forced labour in their GSCs. However, there are differing views among network members as to whether transparency or MHRDD legislation should be enacted. The thesis's most significant example of this was members of the network expressing their views at Canada's 2017 parliamentary study on child labour and modern slavery in supply chains, as to whether transparency or MHRDD legislation was best. While some of the study's participants did support MHRDD, Anglo organizations with business involvement such as Walk Free, Unseen United Kingdom (UK) and the Ethical Trading Initiative (ETI) supported transparency legislation as a transitional or first step to ease

business into modern slavery reporting. Additionally, Unseen UK and the ETI, in an example of international norm diffusion, stated that they referenced the California Transparency in Supply Chains Act (California Transparency Act) 2010, as a starting point for section 54 of the UK Modern Slavery Act 2015, showing a tendency for Anglo jurisdictions to enact similar models of modern slavery legislation. However, international norm diffusion by a network of regulatory intermediaries could not provide a complete picture of why transparency or MHRDD legislation was being enacted in different jurisdictions, and specifically why transparency legislation was tabled in the Canadian parliament.

The second set of literature, that is, the national institutionalization of global norms, was key in explaining the variation in governance and regulatory techniques enacted across jurisdictions. This literature completed the answer to research question two pertaining to why transparency legislation was tabled in the Canadian parliament. It explained the process of active norm diffusion, whereby international norms are contested and shaped by features of the domestic political economy to better fit with local institutions. Active norm diffusion in Canada is illustrated across Chapters Two, Three and Four. One of the most significant features of Canada's political economy, that is, its cultural and political links to the Anglosphere, influenced the tabling of transparency legislation. Anglo countries, including Canada, favour liberal, market capitalist systems where autonomous business actors set the parameters for corporate governance, with limited state intervention. Light-touch transparency legislation is more in line with this economic tradition as opposed to more robust MHRDD legislation, as evidenced by transparency legislation enacted in California, the UK and Australia.

In addition to economic tradition, the Anglo approach to modern slavery legislation in Canada was due to civil society organizations (CSOs), advocating such an approach. World Vision was instrumental in advocating for a modern slavery law in Canada since 2016, and pushed for Canada's 2017 parliamentary study on child labour and modern slavery in supply

chains. It cited the California Transparency Act 2010 and UK Modern Slavery Act 2015 as inspiration. Liberal Member of Parliament (MP) John McKay stated that World Vision's advocacy and the UK Modern Slavery Act 2015 was the inspiration for Bill C-423, which he tabled in 2018. The rhetoric that transparency legislation was a first step, which was used by MP McKay and Bill S-211's sponsor Independent Senator Julie Miville-Dechêne, stemmed from the Anglo approach that legislation could be reviewed and strengthened later if the desired changes in corporate practices did not occur. World Vision and these key parliamentarians were integral in the process of norm localization, that is, using the rhetoric of a first step to signal the light-touch and business friendly nature of the legislation. These local regulatory intermediaries were therefore in alignment with the Anglo international regulatory intermediaries such as Walk Free, the ETI and Unseen UK. The findings of my thesis clearly show the Anglo influence on the tabling of transparency legislation.

During both the Harper Conservative and Trudeau Liberal eras from 2006 to 2015, and 2015 to 2023 respectively, the Canadian mining industry's powerful lobby successfully thwarted stronger regulation of the industry. This was exemplified by the failed passage of Bill C-300 discussed in Chapter Three, and the weakened mandate of the Canadian Ombudsperson for Responsible Enterprise (CORE) discussed in Chapter Four. MP John McKay, based on his experience with Bill C-300, was clear that transparency legislation as opposed to MRDD would get industry support along with the necessary support in parliament. As noted in Chapter Four, the Mining Association of Canada, Retail Council of Canada and the Canadian Chamber of Commerce all expressed support for a transparency law. Industry support also meant support from the Conservative party which was necessary as the Liberals held a minority government in 2023 and needed the support of another party to pass legislation.

It is important to recall that the Liberal government never tabled a government modern slavery bill. As recounted in Chapter Four, it was Liberal MP McKay and Senator Julie Miville-

Dechêne that pushed the legislation forward. Although the Covid-19 pandemic slowed down the progress of legislation, given that the Liberals held a majority government from the period 2015 to 2019 — a period in which the UK, France and Australia passed legislation — a modern slavery law was clearly not a priority of the Liberal government. As discussed in Chapter Four, international pressure made modern slavery legislation a priority for the Liberal government, especially the global media spotlight placed on personal protective equipment (PPE) made with forced labour entering Canada via supply chains during the pandemic. Given the reluctance by both the Liberals and Conservatives to heavily regulate business it is unsurprising that both these parties would support the less burdensome option to business which was transparency legislation.

In relation to research question three, Chapters Three and Four begin situating Canada in the landscape of emerging regulatory techniques to combat forced labour in GSCs. These chapters establish Canada as having primarily light-touch governance and regulatory techniques, even when they are supposedly hard law. CORE, without the necessary independence and investigatory powers is toothless as far as holding MNCs accountable is concerned. The child and forced labour import ban has been utilized only once and the goods were eventually allowed into Canada on appeal. This is in contrast to the USA which since 2015 has stopped thousands of shipments. Finally Chapter Five typologizes first generation transparency legislation, second generation MHRDD legislation, and third generation MHRDD legislation with civil liability. My evaluation of these legislative models led me to conclude that the transparency law the federal government enacted, while more stipulative of what entities must report than the UK law, is quite weak. As I showed in Chapter Five, Canada's *Fighting Against Forced Labour and Child Labour in Supply Chains Act* relies on the scrutiny of consumers and investors to incentivise companies to tackle forced labour in

their business and supply chains, and this mechanism has proven to be insufficient to alter corporate practices.

My evaluation of legislative models found however that not even second generation MHRDD legislation or third generation MHRDD legislation with civil liability entirely eliminated the issue of cosmetic compliance. Companies cosmetically comply with legislation when they adopt a tick-box approach to reporting by incorporating key terms and language such as conducting social audits without providing meaningful information regarding their efforts to combat modern slavery and human rights abuses in general in their GSCs. Continued reliance on social audits instead of genuine, holistic and ongoing consultation with representative organizations of workers, whom these laws are meant to benefit, contributes to the cosmetic nature of the HRDD process. Additionally, concerns that conducting MHRDD may be equated to a safe harbour defence for companies during litigation remain relevant.

In the case of third generational MHRDD legislation civil liability, proponents of this model point out that there is at least redress for victims in the form of transnational litigation in home state courts when companies fail to be duly diligent. Transnational litigation in home states may somewhat challenge doctrines such as privity of contract, separate legal personality, and *forum non conveniens* which MNCs rely on to distance themselves from the harms caused by their overseas subsidiaries and third parties with whom they have not directly contracted. However, transnational litigation is a slow, costly process with rare successes for victims. Furthermore, MHRDD legislation itself does not challenge or change these fundamental legal principles at all. Rather it adds another regulatory layer over them, and makes companies accept some responsibility for minimizing the risk of harm in their supply chains without imposing direct liability.

Chapter Five also contributes to the literature on the governance of forced labour in supply chains by analyzing how the multiple governance and regulatory techniques

implemented in Canada interact with each other. This analysis found that the layering of increasingly harder techniques to strengthen Canada's regulatory response to modern slavery and forced labour in GSCs is in fact having the opposite effect. These techniques, and proposed techniques including MHRDD legislation, are clashing and actually inadvertently displacing each other. For example, CORE's findings of wrongdoing by an MNC and recommendations for sanctions may be inadmissible in tort claims to reinforce evidence for instance of the use of forced labour in an MNC's supply chain or by their overseas subsidiary. The way CORE interacts with the child and forced labour import ban also lacks clarity. The Canada Border Services Agency (CBSA) is responsible for enforcing the import ban and does so based on information from Employment and Social Development Canada (ESDC), which researches evidence of goods being produced with forced labour. CORE has initiated investigations into companies such as Nike and Dynasty Gold Corporation for use of forced labour, which could potentially be useful in enforcing the import ban. However there is currently no evidence that CORE interacts with the CBSA. Indeed, as noted in Chapter Five, there is very little information on how the CBSA enforces the Canadian ban on importing goods made with forced labour. It is possible that aggressive enforcement of the ban, without first considering the effect it would have on the workers in situations of forced labour, could have a detrimental impact on these workers.

Overall, this thesis found that what is missing from Canada's multiple governance and regulatory initiatives are mechanisms that challenge legal fundamentals such as privity of contract, and the incorporation of workers and worker representative organizations at every stage of development these initiatives. The legal doctrine of joint and several liability for instance can allow MNCs to be held liable for supply chain abuses without them having a contractual relationship with the harmed supply chain workers. The emerging paradigm of worker-driven social responsibility (WSR) puts workers and their representatives, such as trade

unions, at the head of the table in that they are involved in the design, monitoring, enforcement and remediation processes of any contractual agreement made with MNCs to uphold the labour rights of supply chain workers. In this way workers can inform regulators about issues that might not be in the interest of firms or suppliers to reveal. The ability of workers to negotiate the terms of their contract, receive training to identify labour abuses, continuously monitor and voice any problems encountered by means of participation in inspections alongside trade union representatives and the establishment of a complaints mechanism, is far more effective than interviews conducted during periodical social audits. MHRDD Bill C-262, tabled by NDP MP Peter Julian in conjunction with the CNCA, included a duty for companies to consult with employees, trade unions and other stakeholders when developing and implementing due diligence procedures. A similar clause pertaining to the duty to consult in potential MHRDD legislation introduced by the Liberal government, if effectively conducted by MNCs, could be a positive step forward in prioritizing workers in Canada's governance and regulatory initiatives to combat forced labour in GSCs.

Practical implications regarding this research include the application of the theoretical framework to other areas. The theoretical framework is a unique and effective combination of global governance and norm institutionalization literature which was essential to understanding the factors that influence national governments when implementing governance and regulatory initiatives to combat modern slavery in GSCs. However, this theoretical framework could be applied to other areas such as illegal migration, and drug or human trafficking, to assist with understanding how global norms in these areas get institutionalized in the national context. This thesis' application of the theory of regulatory intermediaries, which shows that intermediaries can be international or domestic, possibly attached to a network, and that their action can precede and influence government action, may also be applicable to other areas of research. This thesis' findings regarding the failure of transparency and MHRDD laws to

meaningfully alter corporate practices also calls into question the effectiveness of responsive and especially reflexive regulation, which is used by national governments globally to address transnational issues.

Another important implication of this research concerns the exaggerated language of the term modern slavery how this affects the policies being implemented to address it. Modern slavery has become a buzzword that indicates exploitation so extreme that it falls outside the ordinary world of work. A recent example of this is a 2024 UN report which deemed Canada's Temporary Foreign Worker Program a "breeding ground for contemporary forms of slavery" (United Nations, 2024, p. 5). Canada's Immigration Minister criticized this description of the program as inflammatory and farmers concurred deeming the description extreme (Paperny, 2024; Campbell, 2024). A solution that would empower these workers would be unionization, as the vast majority of abused migrant agricultural workers are denied access to the general collective bargaining law. Use of the term modern slavery however, implies that the labour violations are so exceptional that traditional labour law techniques to combat workplace abuse are insufficient. Ironically, as the findings of this thesis has shown, techniques being developed specifically to address modern slavery and forced labour such as transparency and MHRDD legislation, as well as import bans have not substantially improved the labour standards of workers and in some cases can actually make them worse. Additionally, this focus on modern slavery potentially diverts the attention of policymakers away from less egregious labour violations and indecent forms of work that do not meet the supposed threshold of modern slavery. Workers in such indecent work arrangements may be neglected by regulators as a result of this focus on extreme human rights violations.

This research also raises questions regarding Canada's next steps in terms of governance and regulatory techniques to combat modern slavery in GSCs. Canada enacted first generational transparency legislation in 2023, when it had long been established that second or

third generational MHRDD legislation were the more sophisticated models. While active norm diffusion in the domestic context was the ultimate determinant of Canada enacting a transparency modern slavery law, the role of international norm diffusion may have played a role in the sense that countries believe they should enact similar laws to their peers. For the Canadian Liberal government therefore, enacting transparency legislation may have been for a motive beyond just the eradication of forced labour in GCS. The motive may have been building or reaffirming geopolitical alliances, that is, Canada signalling that it is a member of the Anglo-American community, and will therefore legislate similarly to the other members of the Anglosphere.

This motivation to align itself with the Anglosphere could affect Canada's next steps. The Liberal government has indicated that it may enact MHRDD legislation next. However, despite acknowledging that MHRDD legislation is the better model, no Anglo jurisdiction has yet moved past transparency legislation and import bans to enact MHRDD legislation. Whether Canada enacts MHRDD legislation may depend on if other Anglo jurisdictions also take this step, and more specifically take it first. This thesis showed how much Canada lagged behind in enacting legislation, and only implemented an import ban due to the USA making it a requirement of CUSMA. Additionally, the opinions of the mining industry and other business associations, which have expressed a preference for transparency legislation and alignment of Canadian legislation with the UK and Australian transparency laws, will also be an important factor in this decision. While there is a chance that the Liberal government may enact MHRDD, if the Conservatives gain power in the next federal election it is highly unlikely that they will take this step given their reluctance to regulate business. Transparency legislation would almost certainly be a dead end rather than a first step.

What is apparent from this research is that the enactment of transparency or MHRDD legislation, increasingly the latter specifically, has been recognized globally as the main

strategy or solution to addressing the issue of modern slavery and forced labour in GSCs. This is a consequence of home states attempting to keep up with their peers by enacting these laws, regardless of evidence that they are effective. Strategies to combat modern slavery in GSCs should ideally focus on empowering workers to participate in the protection of their own rights. However, this very complex issue has almost been reduced to one thing, that is, modern slavery legislation, which everyone is expected to champion. This short-circuits analysis and deep thinking about consequences of these laws or better strategies, because as long as a country passes this legislation, it is celebrated for having at least taken the first step. It is important that home states start thinking more deeply about the effect of these laws, if they truly benefit workers, and if not how they can be improved.

Thesis findings also indicate that a greater level of regional and international collaboration among countries is necessary for governance and regulatory techniques to be effective. Increased regional co-operation is needed between Canada, the USA and Mexico for the successful enforcement of each country's forced labour import ban. This is a very important and arguably time sensitive implication of this research because Canada's lack of enforcement of its import ban could be encouraging shipments implicated for use of forced labour in the USA to enter Canada instead. It is therefore crucial that Canada look into the operation of its child and forced labour import ban and make the necessary improvements to eliminate this issue including providing the appropriate training for CBSA agents responsible for detaining shipments at the border.

Greater international collaboration regarding modern slavery legislation is essential to level the playing field for businesses globally, create equivalency across jurisdictions, and raise the standards regarding legislation particularly throughout the Anglosphere. This means that if countries agreed to have MHRDD legislation be the standard, although not a perfect model, it would prompt jurisdictions with transparency legislation to implement MHRDD laws. As

noted in Chapter Five, Walk Free is already advocating for Australia to enact MHRDD legislation to secure its position as a trading partner with the European Union (EU). Additionally, home states globally should include in MHRDD legislation the concept of red lines, that is, that MNCs should not conduct business in regions where human rights are not respected and where conducting meaningful HRDD is not possible.

The findings in this thesis show that all the governance and regulatory initiatives being implemented globally and in Canada to combat modern slavery in GSCs are problematic in some way. A broader perspective than just identifying the issues with the design and implementation of the initiatives themselves is to realize that they are operating in an economic system inherently based on inequality and exploitation. Additionally, none of these initiatives remove the legal fundamental doctrines such as privity and contract and separate legal personality which allow MNCs to take advantage of this inequality, and also shields them from liability for any harm caused. It is only realistic to state that these economic and legal barriers will not be demolished anytime in the near future. I believe the best course of action is to ensure supply chain workers are provided the means to defend themselves against workplace abuses. This means designing and implementing governance and regulatory techniques with a labour law approach in mind, rather than purely human rights or trade law perspectives which has been the tendency in Canada. Prioritizing worker agency and preserving their ability to participate in the protection of their own rights for instance via labour techniques such as unionization, collective bargaining and public enforcement should be incorporated as much as possible.

There are various future areas for research that could be pursued based on this thesis. For instance, a study exploring the effectiveness of Canada's transparency modern slavery act could examine the first set of modern slavery reports filed under the act which were due on May 31, 2024. Such a study would reveal details such as how companies respond to the

reporting criteria, if they conducted any due diligence processes even though the transparency law does not mandate it, and whether there is any difference in the reports of companies submitting in multiple jurisdictions. A future study could also look more deeply into Canada's child and forced labour import ban. Currently there are ongoing consultations regarding the design and implementation of the import ban. Using the findings of this thesis as a starting point such a study could investigate whether there is more clarity about how the ban is enforced in terms communication between ESDC, which investigates and receives complaints about shipments containing goods potentially made with child and forced labour, and the CBSA agents at the border detaining the shipments. It could also look into what training CBSA agents receive, how they identify the shipments which need closer inspection, and whether there is greater collaboration with the USA and Mexico so that implicated goods are not re-routed from one country to another with more lax enforcement.

Another avenue for future research is to study the impact of CORE. This thesis found that the office is currently ineffective. However, a future study could explore whether any serious consideration is being given to establishing the office under the Inquiries Act so that the ombudsperson would have the requisite investigatory powers. Looking into the investigations CORE has undertaken, their outcomes, and whether companies made any changes as result of recommendations from the office could also prove to be interesting. Finally, future research could explore whether Canada takes the next steps and enacts a MHRDD law, and if so, what the law requires.

Bibliography

Abbott, K. W., Levi-Faur, D., & Snidal, D. (2017). Theorizing Regulatory Intermediaries: The RIT Model. *The ANNALS of the American Academy of Political and Social Science*, *670*(1), 14–35.

Abbott, K. W., & Snidal, D. (2000). Hard and Soft Law in International Governance. *International Organization*, *54*(3), 421–456.

Abrahamsen, R., & Williams, M. C. (2009). Security Beyond the State: Global Security Assemblages in International Politics. *International Political Sociology*, *3*(1), 1–17.

Acharya, A. (2004). How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism. *International Organization*, *58*(02), 239–275.

Adler, M. (2018, December 21). Scarborough MP bill seeks to keep "modern slavery" goods out of Canada. *Toronto.Com*.

Advisory Group Report. (2007). *National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries: Advisory Group Report*.

Allain, J. (Ed.). (2013). *The Legal Understanding of Slavery: From the Historical to the Contemporary*. Oxford University Press.

Alliance 8.7. (2023). *About Alliance 8.7*. https://www.alliance87.org/about

Amnesty International. (2017). *Submission to the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development for the Canadian Parliamentary Study on Child Labour and Modern Slavery*. Amnesty International Canada.

Anner, M., Bair, J., & Blasi, J. (2013). Towards Joint Liability in Global Supply Chains: Addressing the Root Causes of Labor Violations in International Subcontracting Networks. *Comparative Labor Law and Policy Journal*, *35*(1), 1–43.

Aradau, C. (2008). *Rethinking Trafficking in Women: Politics out of Security*. Palgrave Macmillan.

Archer, K. (1990). *Political Choices and Electoral Consequences: A Study of Organized Labour and the New Democratic Party*. McGill-Queen's University Press.

Arengo, E. (2019). *Future oF Fashion: Worker-Led Strategies for Corporate Accountability in the Global Apparel Industry*. International Labor Rights Forum (ILRF).

Asia Floor Wage. (2022). *Dindigul Agreement to Eliminate Gender-Based Violence and Harassment Signed – Asia Floor Wage Alliance, Fact Sheet*.

Ayres, I., & Braithwaite, J. (1992). *Responsive Regulation: Transcending the Deregulation Debate*. Oxford University Press.

Bair, J., & Palpacuer, F. (2015). CSR beyond the corporation: Contested governance in global value chains. *Global Networks*, *15*(s1), S1–S19.

Baldwin, R., & Black, J. (2008). Really Responsive Regulation. *The Modern Law Review*, *71*(1), 59–94.

Bales, K. (2005). *New Slavery: A Reference Handbook*. ABC-CLIO.

Bales, K. (2013). Slavery in its Contemporary Manifestations. In J. Allain (Ed.), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (pp. 281–303). Oxford University Press.

Ballingall, A. (2024, May 7). 'It's a disgrace': Critics slam Trudeau government's record of preventing imports of goods suspected to be made by forced labour. *Toronto Star*.

Barber v. Nestlé USA Inc 154 F. Supp. 3d 954 C.D. Cal. 2015.

Bardwell, J., & Carrier, P. (2017). How The UK Modern Slavery Act Can Find its Bite. *openDemocracy*.

Barna, A. G. (2018). The Early Eight and the Future of Consumer Legal Activism to Fight Modern-Day Slavery in Corporate Supply Chains. *William & Mary Law Review*, *59*(4), 1449–1490.

Barrientos, S., & Smith, S. (2007). Do Workers Benefit from Ethical Trade? Assessing Codes of Labour Practice in Global Production Systems. *Third World Quarterly*, *28*(4), 713–729.

Barry, A. (2004). Ethical Capitalism. In W. Larner & W. Walters (Eds.), *Global Governmentality: Governing International Spaces* (pp. 195–207). Routledge.

Bartley, T. (2018). Re-centering the State Toward Place-conscious Transnational Governance? In *Rules without Rights: Land, Labor, and Private Authority in the Global Economy* (First Edition, pp. 259–284). Oxford University Press.

Beale, H. (Ed.). (2012). *Chitty on Contracts* (31st ed., Vol. 1). Sweet & Maxwell.

Beatty, P., Andrews, T., & Peeling, G. (2010, October 18). Bill C-300 A Poorly Constructed Bill. *The Hill Times*.

Bélanger, É. (2003). Issue Ownership by Canadian Political Parties 1953-2001. *Canadian Journal of Political Science*, *36*(3), 539–558.

Bélanger, É., & Godbout, J.-F. (2010). Why Do Parties Merge? The Case of the Conservative Party of Canada. *Parliamentary Affairs*, *63*(1), 41–65.

Bengtsen, P. (2021, September 14). Debt Bondage Payouts Flow to Workers in Malaysia's Glove Industry. *The Diplomat*.

Bennett, J. (2002). America and the West: The Emerging Anglosphere. *Orbis*, *46*(1), 111–126.

Bergkamp, P. A. (2018). Models of Corporate Supply Chain Liability. *Jura Falconis*, *55*(2), 161–227.

Berman, C. (2016, September 25). Shaping the Modern Slavery Act: A Look Back. *openDemocracy*.

Bernstein, S., & Cashore, B. (2007). Can non-state global governance be legitimate? An analytical framework. *Regulation & Governance*, *1*(4), 347–371.

Berthiaume, L. (2007, July 11). *Press Responses: July 11, 2007 | Chamber says PM Broke Promise at G8*. https://halifaxinitiative.org/content/press-responses-july-11-2007

Bhat, P. I. (2020). Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles. In P. I. Bhat (Ed.), *Idea and Methods of Legal Research* (pp. 143–168). Oxford University Press.

BHRRC. (2016). *FTSE 100 At the Starting Line: An Analysis of Company Statements Under the UK Modern Slavery Act* (pp. 1–15). Business & Human Rights Resource Centre.

Bill C-300: *An Act Respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries*. (2009). 1st Reading Feb. 9, 2009, 40th Parliament, 2nd session.

Birkey, R. N., Guidry, R. P., Islam, M. A., & Patten, D. M. (2018). Mandated Social Disclosure: An Analysis of the Response to the California Transparency in Supply Chains Act of 2010. *Journal of Business Ethics*, *152*(3), 827–841.

Black, J. (2008). Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes. *Regulation & Governance*, *2*(2), 137–164.

Blackwell, T. (2021, June 21). "Tip of a much larger iceberg": Report reveals more evidence of forced-labour goods imported to Canada. *National Post*.

Block, N. (2017). Toronto's buried history: The dark story of how mining built a city. *The Guardian*.

Boersma, M., & Nolan, J. (2022). Modern Slavery and the Employment Relationship: Exploring the Continuum of Exploitation. *Journal of Industrial Relations*, *64*(2), 165–176.

Brabant, S., & Savourey, E. (2017). France's Corporate Duty of Vigilance Law: A Closer Look at the Penalties Faced by Companies. *International Journal of Compliance and Business Ethics- Supplement to the Corporate and Business Legal Week*, *50*, 1–5.

Broome, A., & Quirk, J. (2015). Governing the World at a Distance: The Practice of Global Benchmarking. *Review of International Studies*, *41*(5), 819–841.

Brudney, J. J. (2016). Decent Labour Standards in Corporate Supply Chains: The Immokalee Workers Model. In J. Howe & R. Owens (Eds.), *Temporary Labour Migration in the Global Era: The Regulatory Challenges* (pp. 251–376). Hart Publishing.

Budget. (2023). *Budget 2023: A Made-In-Canada Plan*. Department of Finance Canada. https://www.budget.canada.ca/2023/home-accueil-en.html

Budget. (2024). *Budget 2024: Fairness For Every Generation*. Department of Finance Canada. https://budget.canada.ca/2024/home-accueil-en.html

Bueno, N., & Kaufmann, C. (2021). The Swiss Human Rights Due Diligence Legislation: Between Law and Politics. *Business and Human Rights Journal*, *6*(3), 542–549.

Buhmann, K. (2020). Business, Human Rights, and Reflexive Regulation: Multi-stakeholder Development of Standards for Responsible Business Conduct. In J. D. Rendtorff (Ed.), *Handbook of Business Legitimacy: Responsibility, Ethics and Society* (pp. 509–523). Springer International Publishing.

Bull, H. (1959). What is the Commonwealth? *World Politics*, *11*(4), 577–587.

Bunting, A., & Quirk, J. (2017). More Than Rhetorical Strategy? The Politics and Ideology of a New Political Cause. In A. Bunting & J. Quirk (Eds.), *Contemporary Slavery: Popular Rhetoric and Political Practice* (pp. 5–35). UBC Press.

Cafaggi, F. (2010). *Private Regulation, Supply Chain and Contractual Networks: The Case of Food Safety* (European University Institute Working Papers RSCAS 2010/10; Robert Schuman Centre for Advanced Studies Private Regulation Series-03). European University Institute.

Campbell, T. (2024, August 15). Essex County Farmers Denounce as 'Extreme' United Nations 'Slavery' Report. *Windsor Star*.

Canadian Labour Congress. (2017). *Submission by the Canadian Labour Congress to the House of Commons Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development (SDIR) regarding the Study on Child Labour and Modern Slavery*. Canadian Labour Congress.

Carrier, P. (2021). *Modern Slavery Act: Five years of Reporting, Conclusions From Monitoring Corporate Disclosure*. Business & Human Rights Resource Centre.

Carty, R. K. (2015). *Big Tent Politics: The Liberal Party's Long Mastery of Canada's Public Life*. UBC Press.

Case No. 2012/3925, First Instance Court of Gent, 19th Chamber, 5 November 2012.

CCC. (2022). *The Canadian Chamber of Commerce RE: Bill S-211, Fighting Against Forced Labour and Child Labour in Supply Chains Act*.

https://sencanada.ca/en/committees/ridr/briefs/44-1#?sessionFilter=44-1&OrderOfReferenceID=568185

Chase, S. (2021, November 15). Canada Seizes Goods Made with Forced Labour from China; MPs Urge More Action for Uyghurs. *The Globe and Mail*.

Chase, S. (2022, May 27). Only Shipment Canada has Seized on Suspicion of Forced Labour was Released After Challenge from Importer. *The Globe and Mail*.

Chilton, A. S., & Sarfaty, G. (2016). *The Limitations of Supply Chain Disclosure Regimes* (No. 766; Coase-Sandor Working Paper Series in Law and Economics). Coase-Sandor Institute for Law and Economics.

Choi-Fitzpatrick, A. (2012). Rethinking Trafficking: Contemporary Slavery. In A. Brysk & A. Choi-Fitzpatrick (Eds.), *From Human Trafficking to Human Rights: Reframing Contemporary Slavery* (pp. 13–24). University of Pennsylvania Press.

Ciupa, K., & Zalik, A. (2020). Enhancing Corporate Standing, Shifting Blame: An Examination of Canada's Extractive Sector Transparency Measures Act. *The Extractive Industries and Society*, *7*(3), 826–834.

CNCA. (2019 (a)). Press Release: Canadian Government Reneges on Promise to Create Independent Corporate Human Rights Watchdog. *CNCA - RCRCE*.

CNCA. (2019 (b)). Press Release: Government of Canada Turns Back on Communities Harmed by Canadian Mining Overseas, Loses Trust of Canadian Civil Society. *CNCA - RCRCE*.

CNCA. (2021). Government Conceals and Ignores Expert Advice on CORE, Report Leaked by Civil Society. *CNCA - RCRCE*.

Consevative Party of Canada. (2021). *Canada's Recovery Plan* [The Conservative Government of Canada's 2021 Election Platform].

Cortell, A. P., & Davis Jr., J. W. (2000). Understanding the Domestic Impact of International Norms: A Research Agenda. *International Studies Review*, *2*(1), 65–87.

Cossart, S., Chaplier, J., & Beau De Lomenie, T. (2017). The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All. *Business and Human Rights Journal*, *2*(2), 317–323.

Coumans, C. (2011, November 29). Whose Development? Mining, Local Resistance and Development Agendas. *MiningWatch Canada*.

Craig, G. (2017). The UK's Modern Slavery Legislation: An Early Assessment of Progress. *Social Inclusion*, *5*(2), 16–27.

Cross, W. (2004). *Political Parties*. UBC Press.

Crowley, B. L., Clemens, J., & Veldhuis, N. (2010). *The Canadian Century: Moving Out of America's Shadow*. Key Porter Books.

Customs Tariff. (1997). *Consolidated federal laws of Canada, Customs Tariff S.C. 1997, c. 36*. https://laws-lois.justice.gc.ca/eng/acts/c-54.011/FullText.html

Das v. George Weston Limited 2018 ONCA 1053.

DeLanda, M. (2006). *A New Philosophy of Society: Assemblage Theory and Social Complexity*. Continuum.

Deleuze, G., & Guattari, F. (1987). *A Thousand Plateaus: Capitalism and Schizophrenia*. University of Minnesota Press.

Deleuze, G., & Parnet, C. (1987). *Dialogues*. Columbia University Press.

Dentons. (2016). *World Vision: Constitutional Basis for the Enactment of Federal Supply Chain Transparency Legislation* [Memorandum from Dentons Canada LLP to World Vision Canada and Thomson Reuters Foundation]. Dentons Canada LLP.

DeSouza, M. (2016, June 16). Canada Lent Billions to Oil, Gas and Mining Companies. Then it Made a Profit. *Canada's National Observer*.

Deva, S. (2023). Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders? *Leiden Journal of International Law, 36*(2), 389–414.

DFAIT. (2005). *Mining in Developing Countries – Corporate Social Responsibility: The Government's Response to the Report of the Standing Committee on Foreign Affairs and International Trade*. Department of Foreign Affairs and International Trade.

Do, T. T. (2014, January 31). MP John McKay Resigned to "Glorious Death" of Mining Transparency Bill. *CBC News*.

Doern, G. B., & Stoney, C. (n.d.). *How Ottawa Spends: The Trudeau Liberals in Power, 2016-2017*. The School of Public Policy and Administration, Carleton University.

Donaghey, J., & Reinecke, J. (2018). When Industrial Democracy Meets Corporate Social Responsibility—A Comparison of the Bangladesh Accord and Alliance as Responses to the Rana Plaza Disaster. *British Journal of Industrial Relations*, *56*(1), 14–42.

Dowling, C. (2022). Mining Companies Face an Evolving Array of Climate Change Risk and Opportunities. *Canadian Mining Journal*.

Drahos, P. (2017). Regulatory globalisation. In P. Drahos (Ed.), *Regulatory Theory* (1st ed., pp. 249–264). ANU Press.

Dwyer, E. (2019, May 15). Canada's "Toothless" New Corporate Watchdog is a Broken Promise and a Major Setback for Human Rights. *Business & Human Rights Resource Centre*.

ECCJ. (2018). *Key Features of Mandatory Human Rights Due Diligence Legislation* [ECCJ Position Paper]. European Coalition for Corporate Justice.

Eller, K. H. (2020). Is 'Global Value Chain' a Legal Concept? Situating Contract Law in Discourses Around Global Production. *European Review of Contract Law*, *16*(1), 3–24.

Erskine, M. (2020, August 26). Justin Trudeau Calls for a Reset by Proroguing Parliament. *The Manitoulin Expositor*.

ESDC. (2019). Consultation on Labour Exploitation in Global Supply Chains. (Obtained via Freedom of Information/FOI Request to Employment and Social Development Canada).

ESDC. (2022). *Labour Exploitation in Global Supply Chains: What We Heard Report*. Employment and Social Development Canada.

ETI. (2017). *Submission to the Parliament of Canada, House of Commons, Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development Study into Child Labour and Modern Slavery*. The Ethical Trading Initiative.

Evans, A. (2020). Overcoming the Global Despondency Trap: Strengthening Corporate Accountability in Supply Chains. *Review of International Political Economy*, *27*(3), 658–685.

Farney, J., & Rayside, D. (Eds.). (2013). *Conservatism in Canada*. University of Toronto Press.

Fereday, J., & Muir-Cochrane, E. (2006). Demonstrating Rigor Using Thematic Analysis: A Hybrid Approach of Inductive and Deductive Coding and Theme Development. *International Journal of Qualitative Methods*, *5*(1), 80–92.

Finnemore, M. (1996). *National Interests in International Society*. Cornell University Press.

Finnemore, M., & Sikkink, K. (1998). International Norm Dynamics and Political Change. *International Organization*, *52*(4), 887–917.

Ford, J., & Nolan, J. (2020). Regulating Transparency on Human Rights and Modern Slavery in Corporate Supply Chains: The Discrepancy between Human Rights Due Diligence and the Social Audit. *Australian Journal of Human Rights*, *26*(1), 27–45.

Foucault, M. (1979). On Governmentality. *Ideology & Consciousness*, *6*, 5–22.

Freiberg, A. (2010). *The Tools of Regulation*. Federation Press.

French, C. (2009, November 26). Proposed Canadian Law Would Police Miners Abroad. *Reuters*.

Friedman, G. (2019, April 8). "Lobbied to Death": Liberals Face Backlash Over Corporate Responsibility Ombudsman. *Financial Post*.

Fudge, J. (2018). Why Labour Lawyers Should Care About the Modern Slavery Act 2015. *King's Law Journal*, *29*(3), 377–406.

Fudge, J. (2022). Bad for Business: The Construction of Modern Slavery and the Reconfiguration of Sovereignty. *London Review of International Law*, *10*(1), 3–31.

Fudge, J. (2024). *Constructing Modern Slavery: Law, Capitalism, and Unfree Labour*. Cambridge University Press.

Fudge, J., Fanou, T., & Humphrey, J. (2022). *Addressing Labour Exploitation through Global Supply Chains: Moving Beyond Window Dressing to Effective Regulation* (pp. 1–23) [GFLC Submission to Employment and Social Development Canada Regarding extended consultation on Labour Exploitation in Supply Chains]. McMaster University.

Fudge, J., & LeBaron, G. (2024). Regulatory Design and Interactions in Worker-Driven Social Responsibility Initiatives: The Dindigul Agreement. *Forthcoming International Labour Review*, 1–39.

Fudge, J., & Mundlak, G. (2023). Peeling the Onion: On Choices Judges Make in Transnational Labour Litigation. In B. Langille & A. Trebilcock (Eds.), *Social Justice and the World of Work: Possible Global Futures* (pp. 249–260). Hart.

G7 Foreign Ministers' Meeting, Joint Communiqué. (2017).

Gereffi, G. (2014). Global value chains in a post-Washington Consensus world. *Review of International Political Economy*, *21*(1), 9–37.

German Federal Ministry of Labour and Social Affairs. (2017). *Towards an Inclusive Future: Shaping the World of Work. G20 Labour and Employment Ministers Meeting 2017. Ministerial Declaration*.

Ghai, D. P. (Ed.). (2006). *Decent Work: Objectives and Strategies*. International Institute for Labour Studies, International Labour Office.

Global Affairs Canada. (2009, March). *Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector*. Global Affairs Canada.

Global Affairs Canada. (2018, January 17). *The Government of Canada Brings Leadership to Responsible Business Conduct Abroad* [News releases].

Global Affairs Canada. (2019, April 8). *Minister Carr Announces Appointment of First Canadian Ombudsperson for Responsible Enterprise* [News releases].

Gordon, J. (2017, July 11). The Problem with Corporate Social Responsibility. *Worker-Driven Social Responsibility Network*. https://wsr-network.org/resource/the-problem-with-corporate-social-responsibility/

Government of Canada. (2019 (a)). *Orders In Council PC Number: 2019-0300*.

Government of Canada. (2019 (b)). *Orders In Council PC Number: 2019-1323*.

Government of Canada. (2020). *Canada-United States-Mexico Agreement (CUSMA)—Labour Chapter Summary*. https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/labour-travail.aspx?lang=eng

Government of Canada. (2021). *Integrity Declaration on Doing Business with Xinjiang Entities*. https://www.international.gc.ca/global-affairs-affaires-mondiales/news-nouvelles/2021/2021-01-12-xinjiang-declaration.aspx?lang=eng

Government of Canada. (2023). *Canada-United States Relations*. https://www.international.gc.ca/country-pays/us-eu/relations.aspx?lang=eng

Greenhalgh, S. (2007). Globalization and Population Governance in China. In A. Ong & S. J. Collier (Eds.), *Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems*. Blackwell Publishing.

Gustafsson, M., Schilling-Vacaflor, A., & Lenschow, A. (2023 (a)). Foreign Corporate Accountability: The Contested Institutionalization of Mandatory Due Diligence in France and Germany. *Regulation & Governance*, *17*(4), 891–908.

Gustafsson, M., Schilling-Vacaflor, A., & Lenschow, A. (2023 (b)). The Politics of Supply Chain Regulations: Towards Foreign Corporate Accountability in the Area of Human Rights and the Environment? *Regulation & Governance*, *17*(4), 853–869.

Halifax Initiative. (2007). *Press Release: March 29, 2007 | Groundbreaking Report on Mining, Oil and Gas Companies Released: Civil Society and Industry Representatives Agree on Good Overseas Practices*.

Halifax Initiative. (2023). *Halifax Initiative | A Canadian Coalition for Global Economic Democracy*. https://halifaxinitiative.org/

Hardy, T., & Ariyawansa, S. (2019). *Literature Review on the Governance of Work*. International Labour Office.

Harvey, D. (2005). *A Brief History of Neoliberalism*. Oxford University Press.

Hickey, R. (2013). Seeking to Understand the Definition of Slavery. In J. Allain (Ed.), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (pp. 220–241). Oxford University Press.

House of Commons. (2009 (a)). *Evidence—FAAE (40-2)—No. 41—House of Commons of Canada*. https://www.ourcommons.ca/DocumentViewer/en/40-2/FAAE/meeting-41/evidence

House of Commons. (2009 (b)). *Evidence—FAAE (40-2)—No. 35—House of Commons of Canada*. https://www.ourcommons.ca/DocumentViewer/en/40-2/FAAE/meeting-35/evidence

House of Commons. (2009 (c)). *Evidence—FAAE (40-2)—No. 42—House of Commons of Canada*. https://www.ourcommons.ca/DocumentViewer/en/40-2/FAAE/meeting-42/evidence

House of Commons. (2017, November 23). *Evidence—SDIR (42-1)—No. 86—House of Commons of Canada*. https://www.ourcommons.ca/documentviewer/en/42-1/Sdir/meeting-86/evidence

House of Commons. (2018). *A Call To Action: Ending The Use Of All Forms Of Child Labour in Supply Chains* [Report of the Standing Committee on Foreign Affairs and International Development, and Subcommittee on International Human Rights]. House of Commons of Canada.

House of Commons. (2019). *Government Response to the Nineteenth Report of the Standing Committee on Foreign Affairs and International Development report entitled: A Call to Action: Ending the Use of All Forms of Child Labour in Supply Chains*. House of Commons Canada.

House of Commons. (2022). *Debates (Hansard) No. 74—May 18, 2022 (44-1)*. https://www.ourcommons.ca/DocumentViewer/en/44-1/house/sitting-74/hansard#11699320

House of Commons. (2023). *Debates (Hansard) No. 185—April 26, 2023 (44-1)*. https://www.ourcommons.ca/DocumentViewer/en/44-1/house/sitting-185/hansard

House of Commons Canada. (2023). *Debates (Hansard) No. 190—May 3, 2023 (44-1)*. https://www.ourcommons.ca/DocumentViewer/en/44-1/house/sitting-190/hansard

Human Rights Watch. (2017). *Human Rights Watch Submission to the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development on Child Labor and Modern Slavery*. Human Rights Watch.

ILO. (2014). *Protocol P029—Protocol of 2014 to the Forced Labour Convention, 1930*.

International Labour Office. (2002). *Eliminating the Worst Forms of Child Labour: A Practical Guide to ILO Convention No. 182* (Handbook for Parliamentarians No. 3). International Labour Organization and Inter-Parliamentary Union.

International Labour Organization. (1930). *Convention C029—Forced Labour Convention, 1930 (No. 29)*.

International Labour Organization. (1999). *Convention C182—Worst Forms of Child Labour Convention, 1999 (No. 182)*.

International Labour Organization. (2024). *Profits and Poverty: The Economics of Forced Labour*. International Labour Office.

International Trade Union Confederation. (2017). *Modern Slavery in Company Operation and Supply Chains: Mandatory Transparency, Mandatory Due Diligence and Public Procurement Due Diligence*. International Trade Union Confederation and Business & Human Rights Resource Centre.

Jacob, C., Hausemer, P., Friesenbichler, K., & Meyer, B. (2022). *Trade-Related Policy Options of a Ban on Forced Labour Products*. European Parliament.

Janda, R. (2010). Note: An Act Respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries (Bill C-300): Anatomy of a Failed Initiative. *McGill International Journal of Sustainable Development Law and Policy*, *6*(2), 97–107.

Jepperson, R. L. (1991). Institutions, Institutional Effects, and Institutionalism. In W. W. Powell & P. J. DiMaggio (Eds.), *The New Institutionalism in Organizational Analysis* (pp. 143–163). University of Chicago Press.

Johnston, G. (2013, June 13). Transparency Regime is Good for Business. *The Kingston Whig-Standard*.

Johnston, K., & Bittle, S. (2023). Extracting Profits: State Regulation and the Canadian Ombudsperson for Responsible Enterprise. *Canadian Journal of Law and Society*, *38*(1), 23–45.

Kairos. (2023). *Reflections on the Birth of KAIROS #KAIROS20*. KAIROS Canada. https://www.kairoscanada.org/reflections-on-the-birth-of-kairos

Keenan, K. (2010). Canadian Mining: Still Unaccountable. *NACLA Report on the Americas*, 29–34.

Keenan, K. (2020). Canada's New Corporate Responsibility Ombudsperson Falls Far Short of its Promise. *Business and Human Rights Journal*, *5*(1), 137–142.

Kotiswaran, P. (2016, September 25). The Path to the UK's Modern Slavery Act 2015: An Oral History Project. *openDemocracy*.

Krook, M. L., & True, J. (2012). Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality. *European Journal of International Relations*, *18*(1), 103–127.

LaFianza, J. (2022). *Threatening Ill-Gotten Gains: Analyzing the Effectiveness of a Forced Labor Import Ban in the European Union* (No. 60; European Union Law Working Papers). Stanford – Vienna Transatlantic Technology Law Forum.

Landau, I. (2019). Human Rights Due Diligence and the Risk of Cosmetic Compliance. *Melbourne Journal of International Law*, *20*(1), 1–27.

Landau, I. (2023). *Human Rights Due Diligence and Labour Governance*. Oxford University Press.

Lang, E. (2010). Whither the Liberals? Current State and Prospects of the Liberal Party of Canada. *Internationale Politik Und Gesellschaft*, *4*, 192–206.

Larner, W., & Le Heron, R. (2004). Global Benchmarking: Participating 'at a distance' in the globalizing economy. In W. Larner & W. Walters (Eds.), *Global Governmentality: Governing International Spaces* (pp. 212–228). Routledge.

Larner, W., & Walters, W. (Eds.). (2004). *Global Governmentality: Governing International Spaces*. Routledge.

Latapí Agudelo, M. A., Jóhannsdóttir, L., & Davídsdóttir, B. (2019). A Literature Review of the History and Evolution of Corporate Social Responsibility. *International Journal of Corporate Social Responsibility*, *4*(1), 1–23.

League of Nations. (1926). *Convention to Suppress the Slave Trade and Slavery (Slavery Convention)*. Assembly of the League of Nations.

Lebaron, G., Howard, N., Thibos, C., & Kyritsis, P. (2018). *Confronting Root Causes: Forced Labour in Global Supply Chains*. https://doi.org/10.13140/RG.2.2.35522.68807

LeBaron, G., Lister, J., & Dauvergne, P. (2017). Governing Global Supply Chain Sustainability through the Ethical Audit Regime. *Globalizations*, *14*(6), 958–975.

LeBaron, G., & Rühmkorf, A. (2017). Steering CSR Through Home State Regulation: A Comparison of the Impact of the Bribery Act and Modern Slavery Act on Global Supply Chain Governance. *Global Policy*, *8*(S3), 15–28.

LeBaron, G., & Rühmkorf, A. (2019). The Domestic Politics of Corporate Accountability Legislation: Struggles over the 2015 UK Modern Slavery Act. *Socio-Economic Review*, *17*(3), 709–743.

Liberal Party of Canada. (2021). *Forward. For Everyone.* [Liberal Party of Canada Federal Election 2021 Platform]. https://liberal.ca/our-platform

Lunan, C. (2010). *California Supply Chain Transparency Act Signed into Law | SGB Media Online*. SGB Media.

MAC. (2022). *Mining Association of Canada proposed amendments to: Bill S-211 The Fighting Against Forced Labour and Child Labour in Supply Chains Act*. https://sencanada.ca/en/committees/ridr/briefs/44-1#?sessionFilter=44-1&OrderOfReferenceID=568185

Mahoney, J., & Thelen, K. (2009). A Theory of Gradual Institutional Change. In J. Mahoney & K. Thelen (Eds.), *Explaining Institutional Change: Ambiguity, Agency, and Power* (pp. 1–37). Cambridge University Press.

Mares, R. (2018). Corporate Transparency Laws: A Hollow Victory? *Netherlands Quarterly of Human Rights*, *36*(3), 189–213.

Marleau, R., & Montpetit, C. (Eds.). (2000). *House of Commons Procedure and Practice*. Parliament of Canada.

Marques, J. C. (2016). Private Regulatory Fragmentation as Public Policy: Governing Canada's Mining Industry. *Journal of Business Ethics*, *135*(4), 617–630.

Marshall, S. (2019). *Living Wage: Regulatory Solutions to Informal and Precarious Work in Global Supply Chains* (First edition). Oxford University Press.

Mason, M., Partzsch, L., & Kramarz, T. (2023). The Devil is in the Detail—The Need for a Decolonizing Turn and Better Environmental Accountability in Global Supply Chain Regulations: A comment. *Regulation & Governance*, *17*(4), 970–979.

McCorquodale, R., & Nolan, J. (2021). The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses. *Netherlands International Law Review*, *68*(3), 455–478.

Mende, J. (2019). The Concept of Modern Slavery: Definition, Critique, and the Human Rights Frame. *Human Rights Review*, *20*(2), 229–248.

Mezzadri, A. (2017). *The Sweatshop Regime: Labouring Bodies, Exploitation, and Garments Made in India*. Cambridge University Press.

Mijares Peña, S. C. (2014). Human Rights Violations by Canadian Companies Abroad: Choc v Hudbay Minerals Inc. *Western Journal of Legal Studies*, *5*(1), 1–19.

MiningWatch. (2003). Increased Human Rights Abuses Around TVI Pacific's Philippines Operation | Mining Watch Canada. *MiningWatch Canada*.

MiningWatch. (2010 (a)). Bill C-300 a High Water Mark for Mining and Government Accountability. *MiningWatch Canada*.

MiningWatch. (2010 (b)). The Government's New "CSR Counsellor" for the Extractive Sector | Mining Watch Canada. *MiningWatch Canada*.

MiningWatch. (2023). *About Us | Mining Watch Canada*. https://www.miningwatch.ca/about

Mückenberger, U. (2008). Alternative Mechanisms of Voice Representation. In B. Bercusson & C. Estlund (Eds.), *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions* (pp. 227–251). Hart Publishing.

Müller, M. (2015). Assemblages and Actor-networks: Rethinking Socio-material Power, Politics and Space. *Geography Compass*, *9*(1), 27–41.

Neve, A. (2010). Strengthened Human Rights Accountability in Extractive Sector in Everyone's Interest. *The Hill Times*.

Nevsun Resources Ltd. v. Araya, 2020 SCC 5.

Nolan, J. (2018). Hardening Soft Law: Are the Emerging Corporate Social Disclosure and Due Diligence Laws Capable of Generating Substantive Compliance with Human Rights Norms? *Brazilian Journal of International Law*, *15*(2), 65–83.

Nolan, J., & Bott, G. (2018). Global Supply Chains and Human Rights: Spotlight on Forced Labour and Modern Slavery Practices. *Australian Journal of Human Rights*, *24*(1), 44–69.

Nonet, P., & Selznick, P. (2001). *Law & society in transition: Toward responsive law*. Transaction Publishers.

Obama, B. (2012, September 25). *Remarks by the President to the Clinton Global Initiative*. Whitehouse.Gov. https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative

Obokata, T. (2023). *End of Mission Statement*. United Nations. https://www.ohchr.org/en/press-releases/2023/09/canada-anchor-fight-against-contemporary-forms-slavery-human-rights-un

O'Brien, A., & Bosc, M. (Eds.). (2009). *House of Commons Procedure and Practice* (Second edition). House of Commons Canada.

O'Connell Davidson, J. (2010). New slavery, old binaries: Human trafficking and the borders of 'freedom.' *Global Networks*, *10*(2), 244–261.

O'Connell Davidson, J. (2015). *Modern Slavery: The Margins of Freedom*. Palgrave Macmillan UK.

OECD. (2011). *Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, 2011 Edition*. OECD Publishing.

OECD Watch. (2015). *Remedy Remains Rare: An Analysis of 15 Years of NCP Cases and their Contribution to Improve Access to Remedy for Victims of Corporate Misconduct*. OECD Watch.

Ogilvie, M. H. (2015). Re-Defining Privity of Contract: Brown v. Belleville (City). *Alberta Law Review*, *52*(3), 731–744.

Outhwaite, O., & Martin-Ortega, O. (2019). Worker-Driven Monitoring – Redefining Supply Chain Monitoring to Improve Labour Rights in Global Supply Chains. *Competition & Change*, *23*(4), 378–396.

Oved, M. (2014 (a)). Burkina Faso: After the Gold Rush. *Toronto Star*.

Oved, M. (2014 (b)). Ghana: Canadian Aid Project Goes Off The Rails. *Toronto Star*.

Oved, M. (2014 (c)). Fool's Gold: The Limits of Tying Aid to Mining Companies. *Toronto Star*.

Paperny, A. M. (2024, August 13). Canadian Immigration Minister Says Temporary Worker Program Needs Reform. *Reuters*.

Partzsch, L., & Vlaskamp, M. C. (2016). Mandatory Due Diligence for 'Conflict Minerals' and Illegally Logged Timber: Emergence and Cascade of a New Norm on Foreign Accountability. *The Extractive Industries and Society*, *3*(4), 978–986.

Pazzano, J. (2021, February 26). Trudeau Government Backpedals on Investigating Human Rights Complaints Against Mining Companies. *Global News*.

Peck, J. (2017). *Offshore: Exploring the Worlds of Global Outsourcing*. Oxford University Press.

Pejovic, C. (2001). Civil Law and Common Law: Two Different Paths Leading to the Same Goal. *Victoria University of Wellington Law Review*, *32*(3), 817–842.

Phillips, N. (2018). The Politics of Numbers: Beyond Methodological Challenges in Reseach on Forced Labour. In G. LeBaron (Ed.), *Researching Forced Labour in the Global Economy: Methodological Challenges and Advances*. Oxford University Press.

Phillips, N., LeBaron, G., & Wallin, S. (2018). *Mapping and Measuring the Effectiveness of Labour-related Disclosure Requirements for Global Supply Chains* [ILO Working Paper No. 32]. International Labour Office.

Pickles, J., & Zhu, S. (2013). *The California Transparency in Supply Chains Act* (Capturing The Gains: Economic and Social Upgrading in Global Production Networks) [Working Paper 15]. The University of Manchester.

Pinnington, B., Benstead, A., & Meehan, J. (2022). Transparency in Supply Chains (TISC): Assessing and Improving the Quality of Modern Slavery Statements. *Journal of Business Ethics*, *182*(3), 619–636.

Popplewell, B. (2009, November 22). Canadian Mining Firms Face Abuse Allegations. *Toronto Star*.

Quirk, J. (2012). Defining Slavery in all its Forms: Historical Inquiry as Contemporary Instruction. In J. Allain (Ed.), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (pp. 253–277). Oxford University Press.

Rajagopal, D. (2023, August 11). Canadian Industries Seek Extension on Country's Human-Rights Supply Chain Law. *CTV News*.

RCC. (2022). *The Retail Council of Canada RE: Bill S-211, Fighting Against Forced Labour and Child Labour in Supply Chains Act*. https://sencanada.ca/en/committees/ridr/briefs/44-1#?sessionFilter=44-1&OrderOfReferenceID=568185

Rhodes, R. A. W. (1996). The New Governance: Governing without Government. *Political Studies*, *44*(4), 652–667.

Richard, J. D. (2005). Federalism in Canada. *Duquesne Law Review*, *44*, 5–33.

Risse, T., Ropp, S. C., & Sikkink, K. (Eds.). (1999). *The Power of Human Rights: International Norms and Domestic Change*. Cambridge University Press.

Robinson, C. (2015). Policy and Practice: Claiming Space for Labour Rights within the United Kingdom Modern Slavery Crusade. *Anti-Trafficking Review*, *5*, 129–143.

Rogowski, R. (2013). *Reflexive Labour Law in the World Society*. Edward Elgar Publishing.

Rose, N., & Miller, P. (1992). Political Power Beyond the State: Problematics of Government. *The British Journal of Sociology*, *43*(2), 173–205.

Rose, N., O'Malley, P., & Valverde, M. (2006). Governmentality. *Annual Review of Law and Social Science*, *2*(1), 83–104.

Ruggie, J. G. (2014). Global Governance and "New Governance Theory": Lessons from Business and Human Rights. *Global Governance*, *20*(1), 5–17.

Ruggie, J. G., Rees, C., & Davis, R. (2021). Ten Years After: From UN Guiding Principles to Multi-Fiduciary Obligations. *Business and Human Rights Journal*, *6*(2), 179–197.

Rühmkorf, A. (2018). Transparent Companies? Legal Research Strategies to Understand Forced Labour in Global Supply Chains. In G. LeBaron (Ed.), *Researching Forced Labour in the Global Economy: Methodological Challenges and Advances*. Oxford University Press.

Ryngaert, C. (2019). Addressing North Korean Forced Labour by Means of International Economic Sanctions. In R. E. Breuker & I. B. L. H. van Gardingen (Eds.), *Tightening Belts: Two Regional Case Studies on Corporate Social Responsibility* (pp. 281–293). T.M.C. Asser Press.

Salminen, J., & Rajavuori, M. (2019). Transnational Sustainability Laws and the Regulation of Global Value Chains: Comparison and a Framework for Analysis. *Maastricht Journal of European and Comparative Law*, *26*(5), 602–627.

Sarfaty, G. A. (2015). Shining Light on Global Supply Chains. *Harvard International Law Journal*, *56*(2), 419–463.

Savage, L. (2021). Organized Labour and the NDP: Looking Back on Sixty Years of Party-Union Relations. *Labour / Le Travail*, *88*, 77–112.

Savourey, E., & Brabant, S. (2021). The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption. *Business and Human Rights Journal*, *6*(1), 141–152.

SCFAIT. (2005). *Mining in Developing Countries—Corporate Social Responsibility* (Committee Report No. 14-FAAE (38-1)). House of Commons of Canada.

Schickler, E. (2001). *Disjointed Pluralism: Institutional Innovation and the Development of the U.S. Congress*. Princeton University Press.

Schilling-Vacaflor, A. (2021). Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South? *Human Rights Review*, *22*(1), 109–127.

Scott, C. (2008). Reflexive Governance, Meta-Regulation and Corporate Social Responsibility: The 'Heineken Effect.' In N. Boeger, R. Murray, & C. Villiers (Eds.), *Perspectives on Corporate Social Responsibility* (pp. 170–185). Edward Elgar Publishing.

Senate of Canada. (2020). *Debates of the Senate, 1st Session, 43rd Parliament, Volume 151, Issue 8*. Senate of Canada. https://sencanada.ca/en/content/sen/chamber/431/debates/008db_2020-02-18-e

Sherpa. (2019). *Vigilance Plans Reference Guidance* [First Edition]. Sherpa.

Simons, P. (2023). Developments in Canada on Business and Human Rights: One Step Forward Two Steps Back. *Leiden Journal of International Law*, *36*(2), 363–388.

Sinclair, A., & Dinshaw, F. (2022). *Paper Promises? Evaluating the early impact of Australia's Modern Slavery Act*. Human Rights Law Centre.

Skrivankova, K. (2010). *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation* (JRF Programme Paper: Forced Labour). Joseph Rowntree Foundation.

Slaughter, A.-M. (2004). Disaggregated Sovereignty: Towards the Public Accountability of Global Government Networks. *Government and Opposition*, *39*(2), 159–190.

Smit, L., Bright, C., & Neely, S. (2023). Muddying the Waters: The Concept of a 'Safe Harbour' in Understanding Human Rights Due Diligence. *Business and Human Rights Journal*, *8*(1), 1–17.

Sobel-Read, K., Anderson, G., & Salminen, J. (2018). Recalibrating Contract Law: Choses in Action, Global Value Chains and the Enforcement of Obligations Outside of Privity. *Tulane Law Review*, *93*(1), 1–37.

Syam, A., & Roggensack, M. (2020). *Importing Freedom: Using the U.S. Tariff Act to Combat Forced Labor in Supply Chains*. The Human Trafficking Legal Center.

Szeto, E., Taylor, C., & Tomlinson, A. (2021, January 15). Hidden camera Reveals "Appalling" Conditions in Overseas PPE Factory Supplying Canadian Hospitals, Expert Says. *CBC News*.

Teubner, G. (1983). Substantive and Reflexive Elements in Modern Law. *Law & Society Review, 17*(2), 239–285.

Teubner, G. (1985). Corporate Fiduciary Duties and Their Beneficiaries: A Functional Approach to the Legal Institutionalization of Corporate Responsibility. In K. J. Hopt & G. Teubner (Eds.), *Corporate Governance and Directors' Liabilities* (pp. 149–177). DE GRUYTER.

The Canadian Press. (2021, January 25). Grim Anniversary: A Timeline of One Year of COVID-19. *CTV News*.

The Centre for Social Justice. (2013). *It Happens Here: Equipping the United Kingdom to Fight Modern Slavery* [A policy report by the Slavery Working Group]. The Centre for Social Justice.

The Human Trafficking Legal Center. (2024). *Trade and Forced Labor—Human Trafficking Legal Center*. https://htlegalcenter.org/our-work/trade-and-forced-labor/

Thelen, K. (2003). How Institutions Evolve: Insights from Comparative Historical Analysis. In J. Mahoney & D. Rueschemeyer (Eds.), *Comparative Historical Analysis in the Social Sciences* (pp. 305–366). Cambridge University Press.

Thompson, R. B. (1991). Piercing the Corporate Veil: An Empirical Study. *Cornell Law Review, 76*(5), 1036–1074.

Tolksdorf, D., & Kuenning, X. (2019). Trudeau's Foreign Policy: Progressive Rhetoric, Conventional Policies. *Green European Journal*.

UK Department for International Development. (2017). *Policy Paper: A Call to Action to End Forced Labour, Modern Slavery, and Human Trafficking*.

United Nations. (1956, September 7). *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*. OHCHR.

United Nations. (2000). *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. OHCHR.

United Nations. (2008). *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development: Protect, Respect*

and Remedy: A Framework for Business and Human Rights (A/HRC/8/5). United Nations General Assembly.

United Nations. (2009). *Promotion of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Business and Human Rights: Towards operationalizing the "protect, respect and remedy" framework* (A/HRC/11/13). United Nations General Assembly.

United Nations. (2011). *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (HR/PUB/11/04). United Nations Office of the High Commissioner of Human Rights.

United Nations. (2020). *UN Human Rights "Issues Paper" on Legislative Proposals for Mandatory Human Rights Due Diligence by Companies*. United Nations Office of the High Commissioner of Human Rights.

United Nations. (2024). *Visit to Canada: Report of the Special Rapporteur on Contemporary Forms of Slavery, Including its Causes and Consequences, Tomoya Obokata* (A/HRC/57/46/). United Nations General Assembly.

Unseen UK. (2017). *Submission to the Canadian Government from Unseen UK*. Unseen UK.

U.S. Department of Homeland Security. (2018, August 30). Readout from Secretary Nielsen's Trip to Australia for the Five Country Ministerial. *United States DHS*.

U.S. Department of State. (2018, September 24). Principles To Guide Government Action To Combat Human Trafficking in Global Supply Chains. *United States Department of State*.

Vedanta v. Lungowe [2019] UKSC 20.

Walk Free Foundation. (2013). *The Global Slavery Index 2013*. Walk Free.

Walk Free Foundation. (2018). *The Global Slavery Index 2018*. Walk Free.

Walk Free Foundation. (2020). *Eradicating Modern Slavery: An Assessment of Commonwealth Government Progress on Achieving SDG Target 8.7*. Walk Free.

Walk Free Foundation. (2023). *The Global Slavery Index 2023*. Walk Free.

Walk Free Foundation. (2024). *Australian Government Must Introduce Human Rights Due Diligence Obligations for Businesses*. Walk Free. https://www.walkfree.org/news/2024/australian-government-must-introduce-human-rights-due-diligence-obligations-for-businesses/

Walk Free Foundation, International Labour Organization, & International Organization for Migration. (2017). *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. International Labour Office.

Weihrauch, D., Carodenuto, S., & Leipold, S. (2023). From Voluntary to Mandatory Corporate Accountability: The Politics of the German Supply Chain Due Diligence Act. *Regulation & Governance*, *17*(4), 909–926.

Weil, D. (2014). *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It*. Harvard University Press.

Weitzer, R. (2007). The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade. *Politics & Society*, *35*(3), 447–475.

Wen, S. (2016). The Cogs and Wheels of Reflexive Law – Business Disclosure under the Modern Slavery Act. *Journal of Law and Society*, *43*(3), 327–359.

Whittington, L. (2009, November 27). Mining Companies Deny Abuses; Unproven Allegations Causing Undue Harm to Canadian Industry, Spokesman Says. *Toronto Star*.

Wiseman, N., & Isitt, B. (2007). Social Democracy in Twentieth Century Canada: An Interpretive Framework. *Canadian Journal of Political Science*, *40*(3), 567–589.

World Development Report 2020: Trading for Development in the Age of Global Value Chains. (2019). World Bank Group.

World Vision Canada. (2015). *Check The Chain: Preventing Child Labour, The Case for Canadian Supply Chain Transparency Legislation* [A World VIsion Canada Policy Discussion Paper]. Wold Vision.

Wright, R. W. (1988). Allocating Liability Among Multiple Responsible Causes: A Principled Defense of Joint and Several Liability for Actual Harm and Risk Exposure. *University of California Davis Law Review*, *21*, 1141–1211.

WSR Network. (2017, July 11). What is Worker-Driven Social Responsibility (WSR)? *Worker-Driven Social Responsibility Network*. https://wsr-network.org/resource/what-is-wsr/

Zenker, J. (2018). Made in Misery: Mandating Supply Chain Labor Compliance. *Vanderbilt Journal of Transnational Law*, *51*(1), 297–331.

Zijm, H., Klumpp, M., Regattieri, A., & Heragu, S. (Eds.). (2019). *Operations, Logistics and Supply Chain Management*. Springer International Publishing.

Zumbansen, P. (2008). Law after the Welfare State: Formalism, Functionalism, and the Ironic Turn of Reflexive Law. *The American Journal of Comparative Law*, *56*(3), 769–808.

Appendix 1: *Table 2 – Summary of Two Examples of Transparency and Mandatory Human Rights Due Diligence Legislation*

Elements	**Transparency**		**Mandatory Human Rights Due Diligence**	
Title	***UK Modern Slavery Act 2015, Section 54***	***Australian Modern Slavery Act 2018***	***French Corporate Duty of Vigilance Law 2017***	***German Corporate Due Diligence Act 2021***
Coverage	Slavery, servitude, forced or compulsory labour and human trafficking	Modern slavery including trafficking in persons and child labour	Human rights, fundamental freedoms and the environment	Human rights and environmental standards
Scope	Commercial organizations with a turnover over of £36 million operating in the UK	Entities with a consolidated revenue of $100 million carrying on business Australia	French companies with: • more than 5000 employees including subsidiaries in French territories; • more than 10,000 employees including subsidiaries globally	Enterprises with 3000 employees in Germany (1000 employees from January 1, 2024)
Duty of Due Diligence	None	None	Companies must implement a vigilance plan to identify risks and prevent serious attacks on human rights and the environment	Enterprises must exercise due regard for the human rights and environmental due diligence obligations set out in the Act
Due Diligence Procedures	None	None	The vigilance plan includes: • a map identifying, analyzing and ranking potential risks; • procedures to periodically asses compliance on the part of the company's subsidiaries, subcontractors and suppliers; • actions to mitigate risks or prevent serious harm; • an alert mechanism to identify existing or potential risks in consultation with representatives of relevant trade unions; • a system to monitor and evaluate the effectiveness of measures implemented	Due diligence obligations include: • establishing a risk management system; • designating a responsible person; • performing regular risk analyses; • issuing a policy statement; • laying down preventative measures in the business & with direct suppliers; • taking remedial action; • establishing a complaints procedure; • implementing the obligations with regard to risks to indirect suppliers; • documenting and reporting

Elements	Transparency		Mandatory Human Rights Due Diligence	
Title	***UK Modern Slavery Act 2015, Section 54***	***Australian Modern Slavery Act 2018***	***French Corporate Duty of Vigilance Law 2017***	***German Corporate Due Diligence Act 2021***
Duty to Report	A slavery and human trafficking statement must be prepared for each financial year and published on the organization's website	Entities must give the Minister (Attorney-General's Department) a modern slavery statement for each financial year	The vigilance plan and report on its implementation must be made public in the company's annual report each financial year	An enterprise must prepare and publish on its website an annual report on the fulfilment of its due diligence obligations each financial year
Content of Report	The statement may include information about an organization's: • structure, business and supply chains; • policies regarding slavery & human trafficking; • due diligence processes regarding slavery in its supply chains; • parts of its supply chains where there is a risk of slavery and steps taken to assess and manage that risk; • effectiveness in ensuring that slavery is not occurring in its supply chains, measured against appropriate performance indicators; • training about slavery available to staff	A modern slavery statement must: • identify the entity; • describe its structure, operations and supply chains; • describe the risks of modern slavery practices in its supply chains and entities it owns or controls; • describe actions taken to assess and address those risks, including due diligence and remediation; • describe how the effectiveness of such actions is assessed; • describe the consultation process with entities it owns or controls; • include any other relevant information	What has been done to implement the vigilance plan as outlined under *Due Diligence Procedures*	Regarding the enterprise the report must state: • whether any human rights or environmental risks, or violation of human rights or environmental obligations have been identified; • what has been done to fulfil due diligence obligations; • how the impact and effectiveness of the measures has been assessed; • what conclusions have been drawn from the assessment for future measures
Liability for Failure to Comply	The Secretary of State may bring civil proceedings for an injunction against non-compliant organizations	The Minister may publish an entity's failure to comply with the reporting requirements on the modern slavery register	Civil liability proceedings in a French court whereby non-compliant companies can be ordered to compensate any loss which could have been prevented by compliance with the Law	The Federal Office of Economics and Export Control (BAFA) can fine enterprises up to €800,000 (or 2% of turnover if annual turnover is more than €400 million) & exclude them from public contracts for up to 3 years if fines are at least €175,000

Appendix 2: *Table 4 – Timeline of Events During the Conservative Era, 2006-2015*

Date	Event
June 2005	Parliamentary Standing Committee on Foreign Affairs & International Trade (SCFAIT) released the report *Mining in Developing Countries—Corporate Social Responsibility*. • Report urged the federal government to implement policies to regulate the activities of mining industries abroad.
June to November 2006	Paul Martin Liberal government held *National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Sector in Developing Countries*. • Advisory Group composed of extractive industry representatives, civil society, labour organizations and academics established to draft recommendations for adoption by the federal government. • Formalization of the Canadian Network on Corporate Accountability (CNCA).
January 23, 2006	Conservatives led by Stephen Harper formed a minority government after emerging victorious in the federal election.
March 29, 2007	Advisory Group Report submitted to Conservative Harper Government. • Report recommended establishing ombudsperson to deal with complaints regarding activities of Canadian extractive companies abroad. • Agreed with SCFAIT report that funding for extractive companies should be conditional on them adhering to clearly defined CSR standards.
March 5, 2007	Formation of the Devonshire Initiative (DI) which supported continued voluntary corporate self-regulation of the mining industry.
February 9, 2009	Bill C-300, *An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries* introduced into the House of Commons (HOC) by Liberal Member of Parliament (MP) John McKay. • Sought to establish accountability for Canadian extractive companies operating abroad. • Proposed a complaints mechanism for victims, and withdrawal of funding for non-compliance with stipulated CSR standards.
March 2009	Conservative Harper government responded to Advisory Group Report with CSR policy *Building the Canadian Advantage: A CSR Strategy for the International Extractive Sector*. • Promoted voluntary guidelines for extractive companies such as the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct. • Office of the Extractive Sector CSR Counsellor established as part of this strategy.
April 1, 2009	Bill C-354, *An Act to amend the Federal Courts Act (international promotion and protection of human rights)* introduced into the HOC by New Democratic Party (NDP) MP Peter Julian. • Proposed that non-Canadian plaintiffs have access to Canadian courts in the event of violations of international law by Canadian multinational corporations (MNCs). • Never received a second reading.
April 2009-October 2010	Fierce industry lobby against Bill C-300 led by the Prospectors and Developers Association of Canada (PDAC) and the Mining Association of Canada (MAC).
October 2, 2009	Marketa Evans appointed Extractive Sector CSR Counsellor. • Appointment met with backlash from CNCA due to Evans' affiliation with the mining sector.

October 27, 2010	Bill C-300 defeated in the HOC by a vote of 140-134.
February 26, 2013	Bill C-474, *Transparency of Payments Made by Mining, Oil and Gas Corporations to Foreign Governments Act,* introduced into the HOC by Liberal MP John McKay. • Modelled after Section 1504 of the Dodd-Frank Act 2010, and aimed to promote financial transparency through public disclosure of payments made by extractive companies to foreign governments.
April 9, 2014	Bill C-474 defeated in its second reading. • Subsequent to this defeat the Conservative Harper government included Bill C-474 in their Omnibus Bill C-43, 2014. This was done to fulfil the requirements of the Extractive Industries Transparency Initiative (EITI). • The Conservatives introduced the bill into parliament as the *Extractive Sector Transparency Measures Act* (ESTMA).
December 10, 2014	ESTMA passed and came into forced on came into force on June 1, 2015. • Imposes mandatory reporting of payments made by Canadian businesses in the extractive industry to domestic and foreign governments.

Appendix 3: *Table 5 – Timeline of Events During the Liberal Era, 2015-2023*

Date	Event
October 19, 2015	Liberals led by Justin Trudeau win the federal election and form a majority government.
November to December 2017	Canadian parliamentary study on child labour and modern slavery in global supply chains. • Participants' views were divided between transparency and mandatory human rights due diligence (MHRDD) legislation. • Prominent Anglo organizations supported transparency legislation as a first step.
October 15, 2018	*A Call to Action: Ending the Use of All Forms of Child Labour in Supply Chains* report presented to House of Commons (HOC). • Report noted witnesses' concern that Canada was falling behind. • Recommended that Canada advance legislative and policy measures to motivate business to eliminate modern slavery from their supply chains.
December 13, 2018	Bill C-423, *An Act respecting the fight against certain forms of modern slavery through the imposition of certain measures and amending the Customs Tariff*, tabled by Liberal Member of Parliament (MP) John McKay in the HOC. • Required companies to report steps taken to prevent and reduce the risk of forced and child labour in supply chains. • Sought to amend the Customs Tariff to prohibit importation of goods produced using forced or child labour into Canada.
February 8, 2019	Liberal government replied to *A Call to Action* report stating an intention to conduct consultations regarding supply chain legislation.
January 17, 2018	Liberal government announced creation of the Canadian Ombudsperson for Responsible Enterprise (CORE). • Multi-stakeholder Advisory Body (MSAB) created to advise government and CORE about responsible business conduct abroad.
April 8, 2019	Sheri Meyerhoffer appointed as the CORE. • Appointment met with backlash from CSOs suspicious of Meyehoffer's ties to the extractive industry as a lobbyist for the Canadian Association of Petroleum Producers. • The office was not independent but instead a special adviser to the Minister of Trade. Office mandate also devoid of investigatory powers.
July 11, 2019	All members of the MSAB resign over CORE's weak mandate.
May to June, 2019	Liberal government conducted stakeholder consultations on enacting supply chain legislation spearheaded by Employment and Social Development Canada (ESDC). • Businesses expressed a preference for transparency legislation.
October 21, 2019	Liberals win a minority government in the federal election.
February 5, 2020	Bill S-211, *An Act to enact the Modern Slavery Act and to amend the Customs Tariff*, tabled by Senator Julie Miville-Dechêne in the Senate. • A reiteration of Bill C-423. • Second reading never completed.
February 28, 2020	Supreme Court of Canada held that *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 could proceed to trial to determine if Nevsun had breached customary international law prohibitions against forced labour and slavery.
March 11, 2020	Covid-19 officially declared a pandemic.
March 13, 2020	Parliament adjourned until April 20, 2020.
July 1, 2020	Canada's forced labour import ban came into force. Import ban implemented as a requirement of the Canada-United States-Mexico Agreement (CUSMA).

August 18, 2020	Parliament prorogued until September 23, 2020. • Bills such as Bill S-211 which did not receive royal assent died on the order paper and would have to be reintroduced in the next session.
October 29, 2020	Bill S-216, *An Act to enact the Modern Slavery Act and to amend the Customs Tariff* tabled by Senator Julie Miville-Dechêne in the Senate. • Did not make it past a second reading.
January 15, 2021	Canadian Broadcasting Corporation (CBC) Marketplace report exposed forced labour conditions in the Malaysian Top Glove factory which supplied Personal Protective Equipment (PPE) to Canada via supply chains.
March 22, 2021	Foreign Ministers of Canada, the United Kingdom (UK), and the United States of America (USA) Secretary of State jointly condemned the use of Uyghur Muslim forced labour in Xinjiang China. • Products such as cotton were entering Canada from China via supply chains. • Canadian businesses sourcing from Xingjian mandated to sign an Integrity Declaration stating they were not sourcing from Chinese entities involved in these violations.
September 20, 2021	Liberals win a minority government after Prime Minister Justin Trudeau called a snap elected.
November 24, 2021	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* tabled by Senator Julie Miville-Dechêne in the Senate.
February 8, 2022	Bill C-243, *An Act respecting the elimination of the use of forced labour and child labour in supply chains*, tabled by MP Marcus Powlowski in the HOC. • MP McKay requested MP Powlowski table this bill so that there would be bills in both the Senate and HOC.
March 29, 2022	Bill C-262, *An Act respecting the corporate responsibility to prevent, address and remedy adverse impacts on human rights occurring in relation to business activities conducted abroad*, tabled by New Democratic Party (NDP) MP Peter Julian in the HOC. • Bill proposed MHRDD legislation with civil liability.
March 29, 2022	Bill C-263, *An Act to establish the Office of the Commissioner for Responsible Business Conduct Abroad and to make consequential amendments to other Acts*, tabled by New Democratic Party (NDP) MP Heather McPherson in the HOC. • Bill proposed a Commissioner with investigatory powers replace CORE.
May 3, 2023	Bill S-211 passed its third reading.
May 11, 2023	Bill S-211 received royal assent.