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**EVIDENCE**

**Tuesday, December 5, 2017**

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**Chair**

**Mr. Michael Levitt**



## Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development

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• (1310)

[English]

**The Vice-Chair (Mr. David Sweet (Flamborough—Glanbrook, CPC)):** Good afternoon, ladies and gentlemen, and *bonjour*, colleagues. Welcome to the 89th meeting of the Subcommittee on International Human Rights. We're continuing our study on child labour and modern slavery.

In front of us we have Peter Talibert, a partner with Seyfarth Shaw, from London. Assisting him will be Mark Trachuk, senior corporate securities partner at the law firm Osler, in Toronto. We also have, by video conference, Cindy Berman, head, Modern Slavery Strategy, Ethical Trading Initiative.

I understand that you've been briefed on the amount of time you have for your opening remarks. We'll go to our video conference first, just because it's always hard for people to pay attention to the video conference when there are live people here. Maybe this will help.

Ms. Berman, would you begin your comments, please?

**Ms. Cindy Berman (Head, Modern Slavery Strategy, Ethical Trading Initiative):** Thank you for giving me the opportunity to present today.

The Ethical Trading Initiative is a leading multi-stakeholder initiative that includes companies, trade unions, and NGOs tackling labour rights in global supply chains. Its 90 corporate members include major brands and retailers from all over the world with a combined turnover of over 180 billion pounds U.K. sterling, and our trade union members represent 200 million workers in 163 countries.

We have around 17 large and small civil society organizations, and the premise on which ETI operates is that collaborative engagement in tackling complex problems of labour rights and labour abuse in global supply chains is really the most effective and sustainable way forward.

In relation to the themes that you are addressing in your study, I will speak to all of them briefly.

In relation to theme one on the global overview, just this year ETI produced and launched at our House of Commons two guides for companies on tackling child labour as well as forced labour in their operations in global supply chains. They address the drivers as well as the human rights due diligence steps that companies ought to take

to address the worst forms of child labour and ensure appropriate oversight where children are working legally.

You no doubt will have had more information about the global picture, but I wanted to highlight a few issues in your study.

Most of the world's child workers are in Asia, particularly South Asia. They work largely in the agricultural sector, but child labour is most common amongst girls in domestic work. That is not surprising, because of gender discrimination.

Boys and girls in child labour are often from the poorest families and come from communities that are subject to discrimination on the basis of their caste, race, ethnicity, or religious minorities. They are often poorly educated and in low-skilled and low-paid jobs, and some are subject to hazardous work that is illegal in almost all countries, although it does persist. Child labour is largely hidden and unlikely to be identified by companies in their audits and also by labour inspectors in their labour monitoring systems.

We believe there is a direct relationship—and the evidence shows that there's a direct relationship—between child labour and the working conditions of adults, as well as a lack of social protection. Where adults are paid such poor wages that they cannot support their families, people are locked out of education, health care, and other opportunities and benefits, and children are far more susceptible to abuse and exploitation.

As such, we would argue that the Canadian government should consider legislation that focuses not only on child labour but also on all forms of forced labour that include adults. The Canadian government's welcome focus on gender also offers a particular opportunity to highlight the specific vulnerabilities that girls and women face in forced and child labour.

In theme two, you've asked about case studies and the use of child labour in textile and garment production in South Asia and the seafood and fishing industry in Southeast Asia. ETI has been working in both. I'll set out briefly what we have been doing in these areas and how we see the issues.

The cotton-spinning sector is the backbone of the Tamil Nadu textile sector. It accounts for over 65% of the total number of spinning mills in India and employs around a half a million workers.

Mainly young women aged 16 to 21 are employed as so-called apprentices. Workers often receive no formal contract. About half stay in company-run hostels. Their movement is restricted. There is widespread non-payment of minimum wages. Bear in mind that a minimum wage for textile apprentices is 330 Indian rupees per day. That's six Canadian cents a day. This Sumangali scheme is a scheme where workers are given a lump sum payment after three years of work. It is less prevalent than it was, but it does remain in some rural areas and in some centres.

The working conditions remain poor in these sectors, with long working hours, exposure to cotton dust, limited opportunities for women to be promoted into supervisory positions, widespread allegations of sexual harassment and abuse, a limited ability for unions to operate, and a lack of effective grievance mechanisms.

What is ETI doing? We have been working in this area for some time and recognize the endemic cultural social norms on top of what is a highly exploitative supply chain. We believe that women workers themselves need to be agents of their own change, so we are focused on empowering them through training and through engaging with their supervisors, managers, and spinning mill owners to address the lack of dialogue and engagement, very poor wages, and working conditions.

We've been very pleased with our work and have also engaged with the local authorities to improve the regulatory environment. We have done an evaluation recognizing that we have reached around 16,000 workers, but there is still a very long way to go. The apprenticeship law has been abolished in theory, but we have yet to see its implementation in practice.

To turn to Southeast Asia and the seafood sector, you will know well that exploitation and abuse have been taking place in this sector for some time. That has been fairly well documented. There are many actors engaged now and there is some progress being made, but the progress is slow, for a number of reasons.

The scale of the problem is enormous and many of the companies that are most problematic are not the big brands and retailers, but local Thai industry. The authorities are weak. Legislative change is weak. Political will and action are limited. Problem-solving is weak. Also, migrants are facing discriminatory legislation, which means that many of them choose to migrate illegally and work illegally, putting them at greater risk of exploitation and abuse.

There is limited space for democratic civil society organizations and challenge. There are gross corporate abuse and neglect, as well as criminal trafficking activities, which is hard to eliminate.

There is a lack of ethical recruitment agencies. The worst exploitation is to be found in deep-sea paired trawlers that are far

from land, some of them 24-7 operations that don't dock, even at port. Transshipment means that they never have to return for inspections. Vessel owners are very powerful and often corrupt and absent.

• (1315)

In our view, there are many new international initiatives that are not joined up, and they are not necessarily addressing root causes or long-term solutions. The EU yellow card and the U.S. TIP reports help to keep the Thai government and business focused, but progress is slow, and we recognize that there are many different angles to work on simultaneously.

• (1320)

**The Vice-Chair (Mr. David Sweet):** Ms. Berman, the time is almost up. I need you to conclude as quickly as possible, please.

**Ms. Cindy Berman:** In relation to transparency and supply chains legislation, the ETI was very active in the U.K. Modern Slavery Act in calling for section 54. We think it has been an important driver of change, but we do note significant gaps in its implementation and compliance. We would call on the Canadian government to seriously consider the extent to which the right resources are being put in place to monitor compliance and the effectiveness of the legislation.

We also think there is a risk for the Canadian government in focusing only on child labour as well as focusing on two sectors, because forced labour and child labour are widespread and move across sectors.

**The Vice-Chair (Mr. David Sweet):** Thanks, Ms. Berman. We'll have to conclude there. If there's a way for you to fit in some of your information during the question rotation, you can do that.

Of course, for both witnesses, if there's anything you're not able to share with us today, a written submission to the clerk afterwards is something that we welcome.

We'll move on to Mr. Talibert, please, for 10 minutes.

**Mr. Peter Talibert (Partner, Seyfarth Shaw LLP, As an Individual):** Good afternoon, everyone.

I was making notes while listening to Cindy's presentation. I endorse the opinion that there's a risk in only focusing on child labour. I think this is a complex problem. It's hard to discern what's worse, child labour or forced labour generally, but that's a non sequitur.

My argument today—I've written it out for you—is really that there are some very good reasons why Canada should be legislating for a human trafficking supply chain law at the earliest opportunity. We all know that this is a horrible thing, and I'm not going to tell you horrible stories. I'll just give you a bit of legal analysis.

Other jurisdictions such as the U.K., France, and the European Union have already legislated to address this global crime, and the brave parliamentarians in those jurisdictions have chosen to address this as one of the major issues of our life and times.

Now, Canada has a choice. We can follow in the jet trail of those other countries or we can try to get into the fight a little ourselves. I'm going to try to convince you that the latter is the best choice for Canada.

Everyone's worried about burdening business with increased regulation, but that's a bit of a misconception. Canadian companies are already facing requirements in other jurisdictions to monitor their supply chains. The model that seems to be in development internationally is a website statement talking about avoidance measures; I know you've heard about this in relation to the British and French models, and I probably don't need to repeat those. That is the template that started in California, and it seems that it's being adopted across the piece.

It's incorrect to assume that the law of the United States is silent on the issue of human trafficking. The United States has several powerful laws that it may choose to call into play. In my written submissions, I talk to you about the linkage between market access and human rights, and that's something that as a committee I think you need to consider very carefully.

The laws in the other jurisdictions are already hitting thousands of Canadian companies in multiple ways, principally in two ways. The first is that if Canadian companies are directly doing business in those jurisdictions or have registered offices in those jurisdictions, as per the French law, there's a direct application of those local laws. Take the U.K. Modern Slavery Act as an example. Any Canadian company doing \$10 worth of work in the United Kingdom is caught by the provisions of the Modern Slavery Act.

The second way is something Canadian businesses haven't started to be confronted with yet, and that is that every major European company, including French companies and British companies, has to do an audit of their own supply chains. Canadian companies are shortly going to face a bit of an avalanche of questionnaires if they themselves are part of the supply chain of those companies. They're going to be asked what they're doing to ensure that their supply chains are clean, as a condition of continued business and continued supply of those goods and services to foreign companies. If Australia passes a law—and Australia is obviously ahead of us—the same thing will apply with Australian companies.

Because Canadian companies haven't had to ask themselves yet whether their supply chains are clean, they're going to have a bit of a problem in complying with those requests.

Lawyers have to admit that the rise and rise of human trafficking is like Rana Plaza: a catastrophic failure of the international legal system. There are multiple laws that should have prevented Rana Plaza from happening. They did not. Human trafficking is effectively illegal everywhere, but it's growing everywhere.

The traditional legal approach of a penal law, a sanction-based law, is failing, so people who are thinking about how to address this crime are looking more at economic laws. By “economic” laws, I mean laws that, one, have the market as the policeman or -woman, and two, strive to take the profitability out of human trafficking.

A massive number of trafficked people are actually in the supply chain of the legitimate business sectors. The easiest way for the traffickers—who, by the way, are winning at the moment—to make a profit is to introduce the fruits of the labour of the trafficked people into the legitimate supply chains of global business.

● (1325)

The sort of laws that are being envisaged and passed by the U.K. and France are actually making this a boardroom issue and aligning companies against themselves, their employees, their consumers, and their shareholders directly or indirectly supporting this horrible crime. That's my suggestion for what Canada should do.

Supply chain transparency laws may at least start to take some of the profits out of the human trafficking industry. We don't even know how big it is. The ILO thinks it's 24 million people. I've put a quote in the notes that suggests there could be as many as 46 million people working in slavery conditions on Planet Earth in 2017.

The ILO's estimate for the global untaxed illegal profits of this crime is \$150 billion U.S. per year, but that was based on their initial estimate that there were 21 million people trafficked around the world. If the later figures of 46 million are accurate, it's likely that the global illegal profits of this crime are more in the region of \$400 billion U.S. a year. It's going to continue to grow because it's so profitable, so countries that want to do something about it are going to have to try to take the profits out of it with their domestic laws.

I can talk to you a bit about the history of the Modern Slavery Act and lesser-known history about how section 54 developed. All I can say on that front is that I was there, but that's a bit of a non sequitur. If you want to talk about that in the course of the questions, I'm very happy to do that.

The sort of law that we're proposing and we've seen with the MSA is quite consistent with the way that international corporate governance is developing anyway. Companies now have a greater consideration for the future, the environment, and global sustainability. The old idea that the directors were serving the immediate financial interests of the current shareholders has been consigned to the past.

In conclusion, Canadian law actually needs to get ahead of this issue. We are way late to this party. Other jurisdictions are taking a view, and that's going to catch Canadian companies. Investors in those countries have a greater insight into the risk profile of Canadian companies than Canadians do. That's nuts. We need to do something about that.

Modern slavery is the new bribery. If you think about it, 15 years ago, there were maybe two or three countries that had bribery laws, and then what happened was that if you didn't have one you were considered a corrupt jurisdiction and that became a bit of an economic issue. We're going to see a proliferation of modern slavery laws across the globe, and Canada should be one of the countries that leads in this direction rather than following in the footsteps of other jurisdictions.

Finally, we all know that there's a constitutional issue here. I've suggested in my written submission that Canada might want to look at the Human Rights Act. We've heard in the context of Cindy's presentation and others that there is a link between modern slavery and discrimination on the basis of age, nationality, race, or gender. I posit to you that we can look at this issue with a view to tweaking extant Canadian laws, and that might actually allow Canada to take a stand more quickly than we otherwise are stuck with if we're drafting from scratch.

Thank you.

• (1330)

**The Vice-Chair (Mr. David Sweet):** Thank you very much, Mr. Talibart.

Colleagues, if you'll forgive me in advance, I'll be brutal and that way maximize the amount of people who can ask questions.

Mr. Anderson.

**Mr. David Anderson (Cypress Hills—Grasslands, CPC):** Thank you, Mr. Chair, and thank you to our witnesses for being here today.

Ms. Berman, you mentioned that you have prepared for companies two guides dealing with child and forced labour. Can we have an opportunity to have those presented to committee as part of our testimony?

**Ms. Cindy Berman:** We'd be very happy to share that with you, yes, of course.

**Mr. David Anderson:** Thank you.

I want to follow up on something you were talking about in terms of fishing and seafood workers being offshore and being outside the supervision of authorities. Do you have any specific recommendations for us? That's a little bit of a different situation than it is when you can go into a factory and identify the people who are working there. It seems like a much more difficult challenge to deal with that. Do you have any various specific things we might be able to recommend later?

**Ms. Cindy Berman:** We would like to advocate that inspection of vessels be ensured and argued for in all jurisdictions. I'm obviously not an international specialist in the international waters, but we do argue that in some cases.... For example, the International Transport Workers' Federation has the right to board ships and inspect

conditions, and that should be in waters that are within national jurisdictions as well as international.

We also would like to argue for a consistent law that requires shipowners as well as managers to be part of a better international governance arrangement.

**Mr. David Anderson:** Then try to fit that into supply chain accountability, I assume...?

Both of you have both suggested that we should be focusing not just on child labour but on forced labour and child labour at the same time, and I asked this question the other day: do we risk losing our focus and risk our effectiveness on this issue by putting this all together?

Our study is about child labour. Do we risk losing effectiveness on the child labour front by combining forced labour and child labour? We've seen the statistics in terms of both of those issues, but I'm interested in your opinions on that.

**Mr. Peter Talibart:** I don't think you do. Frankly, the solution for one is also going to be the solution for the other, so you have an opportunity to kill two evils with one stone by combining them.

**Ms. Cindy Berman:** I would fully agree with that. I think that legislation only focused on child labour, and even initiatives, projects, or programs that have been focused only on child labour and eradicating child labour, have all recognized that one has to address families, communities, and wider factors that push children into a child labour situation.

**Mr. David Anderson:** I have a question on the difference between the U.K. legislation and the French legislation. I understand that the U.K. legislation doesn't require companies to take positive due diligence measures, but to report whether they've done so. France is requiring them to do that. Do you see that as an improvement? What would you recommend that we take a look at here as we move ahead?

**Mr. Peter Talibart:** I do see that as an improvement.

Look at the way the needle has moved on these laws. It started out in California with the lightest touch, which was a website statement confined to a couple of sectors and, frankly, it could have been written by anyone. It was the province of the marketing department, as often as not. Then, when companies were queried on the accuracy of the statement, the stock response was, "The guy who drafted this has left the company."

The U.K. advanced that needle a bit by, one, applying this supply chain transparency statement requirement to all industries and, two, having directors sign off on it.

To your point, France has gone half a step farther and has put in that additional requirement. I think it's symptomatic of the way this issue is evolving in legislation around the world.

**Mr. David Anderson:** I'm rapidly running out of time. Do you think we can come to agreement in Canada, given the multi-jurisdictional components of what we're talking about here and given the major challenges we've had in even putting a national regulator in place? Is it possible? What's going to bring that about?

•(1335)

**Mr. Peter Talibart:** Absolutely it's possible: the constitutional lawyers are gnashing their teeth because they can't copy jurisdictionally the Modern Slavery Act. The U.K. is one jurisdiction, so if effectively a federal U.K. law hits all companies, we can't do that in Canada because of our division of powers.

Don't underestimate your ability to influence other laws. If the federal government makes an important step, it doesn't matter that federal law will restrict its application: you're putting a marker down for both the provinces and the rest of the world.

There are a bunch of ways for you to do this, from a customs law to, as I suggested, the Human Rights Act, and you can look at the federal business legislation. If you want to do it, you can do it. Success will be measured in the introduction of the concept of supply chain transparency for human beings into the Canadian legal system.

The law doesn't have to be perfect. Legal systems take these concepts and they work them, so absolutely you can do it.

**Mr. David Anderson:** I have one more question on that if I have time: should the benefits that are available through the diplomatic system—trade commissioner services and EDC services, support, and assistance—be tied to due diligence in supply chain responsibilities?

**Mr. Peter Talibart:** I'm not sure I understand all of those regimes. I apologize.

**Mr. David Anderson:** For example, there's funding from EDC to overseas to be able to develop their markets and those kinds of things. I'm just asking you if you think those should be tied together.

**Mr. Peter Talibart:** Well, yes, but you have to be careful. Again, we told Cheryl of a situation that happened once in which there was a development project that was linked to having no child labour. It successfully delivered a project free of child labour, but child prostitution in the locality went through the roof, so be careful, because you can actually make things worse if you go too far.

**The Vice-Chair (Mr. David Sweet):** Thank you very much.

Mr. Fragiskatos, go ahead.

**Mr. Peter Fragiskatos (London North Centre, Lib.):** Thank you, Chair, and thanks to all of you for appearing today.

I want to pick up on the second-last question that my colleague raised with respect to constitutionality. Thank you very much for the briefing note you sent, Mr. Talibart, but I do worry that constitutionality and the federal makeup of our country could stand in the way of meaningful legislation actually having teeth and having an effect.

In your note, you say that “Canadian constitutional lawyers will struggle to craft a federal Canadian version” of the Modern Slavery Act, specifically section 54, which is perhaps the most relevant section because it focuses on supply chains. Then you expand on that and say that “in most cases provincial laws (securities and company laws as an example) are far more relevant to the modification of Canadian business behavior than Federal laws are”.

I know that you've touched on this already and you've cited examples of how a federal law could work, but if the government were to move forward and pass legislation that contains the spirit and principles of the Modern Slavery Act, could we end up in a situation where the result is that it doesn't have a real effect, and that the provinces actually have the power to legislate changes that would really have an impact on supply chains and the monitoring of supply chains?

I worry about legislation being crafted that doesn't actually have teeth and stands as a symbolic example. Does that actually have an effect, a positive effect?

**Ms. Cindy Berman:** I just wonder whether there are some examples in the U.K. I can't comment on the constitutional situation in Canada, but in the U.K. we have seen in the Scottish Parliament and the Welsh Parliament some strengthening of legislation as a result of national legislation on the Modern Slavery Act. Some of them go even further. It may be worth looking at that as a model.

**Mr. Peter Fragiskatos:** Thank you.

**Mr. Peter Talibart:** I would go back to the point I made about influence, sir. I'm not a constitutional lawyer. You guys have access to constitutional expertise that would be far more effective than mine. The reality is that it has to start somewhere. The way legal systems evolve is that you introduce a concept and the legal system evolves it in a way that's consistent with the way that system operates, so I'm a lead systems architect. When I look at this problem, I don't look at the barriers provided by the Constitution.

My analysis is frankly pretty straightforward: does Canada want to fight this crime? Does Canada want to make a statement? If it does, there are a number of ways within the constraints of federal jurisdiction that we can do it. We can look at our customs laws. We can look at our tax laws. We can look at the Human Rights Act. As long as those are amended in a manner consistent with the way they operate in the constitutional framework, you don't really have a constitutional issue.

To your point, you have a more difficult problem with a brand new law, because you are going to have the provinces saying, “Hang on, you're going a little too far here.” Maybe there would be a constitutional challenge, but let's think about the issue we are dealing with here: child labour and human trafficking. Is it really going to be in anyone's interest to mount a constitutional challenge to that? Maybe. We can't discount it. If you amend a federal law to orient the system against human trafficking, isn't that going to influence the provinces?

Rather than focusing on what we can't do, let's focus on what we can do. We're stuck with a constitutional divide, but if the federal government sets an example within the constraints of its powers, that's going to have an impact on the provinces.

We are having this discussion because the Modern Slavery Act has had that effect on Canada. I told the U.K. Parliament that this was exactly what would happen, and it has. The way legal systems develop, they're like people. They're jealous. They're greedy. They look at each other. They want the money—

•(1340)

**Mr. Peter Fragiskatos:** I don't mean to cut you off, but I have limited time. Thank you very much. You've answered the question very well.

The issue of scope has come up in the various meetings we've had. My concern is the focus on child labour, and just in listening to the questioning that's been happening over the past few meetings, I think Mr. Anderson holds this concern as well, as do other colleagues. I wonder if that is the most effective way to go.

If you make modern slavery and forced labour the emphasis on the model of the approaches of the U.K., Australia, and California, you would still be able to capture the most egregious violations of children's rights and their labour protections, correct? It almost goes without saying, does it not? If modern slavery and forced labour are the emphasis, that would include children, not just adults. That's the approach of the U.K., Australia, and California.

**Mr. Peter Talibart:** Yes, and we're in violent agreement, I feel, but the reality is, that which you would do to secure the system against child labour you would also be doing to secure the system against forced labour. The arbitrary date of the 18th birthday doesn't change the background facts.

**Mr. Peter Fragiskatos:** I have one last question here. It relates to penalties and remedies for non-compliance.

In California, in the U.K., and in what's been proposed in Australia, those models do not provide for fines, sanctions, or civil liability for non-compliance. The Dutch law provides for financial penalties and possible imprisonment. The French law provides for potential fines and civil liability. What do you think is the best approach to take?

**The Vice-Chair (Mr. David Sweet):** Go ahead, Ms. Berman, very briefly, please.

**Ms. Cindy Berman:** We would argue that the French law is the most far-reaching. We support it because it tackles human rights due diligence. We do believe the UN guiding principles on business and human rights are an internationally agreed framework around which companies need a level playing field and clear rules of the game to manage the risks of forced labour and child labour.

A due diligence law that requires companies to conduct human rights due diligence, ensure remedy where rights are violated, address some of those risks, and prevent the problem is the most effective way to go—

**The Vice-Chair (Mr. David Sweet):** Thanks, Ms. Berman. That's all the time we have.

Ms. Hardcastle.

**Ms. Cheryl Hardcastle (Windsor—Tecumseh, NDP):** Thank you, Mr. Chair.

I want to thank all the witnesses for the work they're doing to get our heads around the fact that we have to do something about modern slavery and other human rights abuses, including child slavery. I'll leave it for all of you to talk about why it is to our advantage to customize a law now, to have a made-in-Canada approach, instead of waiting and just following in the metaphorical

jet stream, as I think was mentioned. What opportunities are we losing out on and what should we be doing?

I'd like to hear from Ms. Berman, Mr. Trachuk, and Mr. Talibart on this. I'll use up all my time for these comments, so all of you will have a couple of minutes. Thank you.

•(1345)

**Ms. Cindy Berman:** I think there is a lot of recognition that a proliferation of legislation that is confusing is a risk where companies that operate in multiple jurisdictions need very clear rules of the game. Responsible businesses do need a level playing field, and they need to know that what they are required to do in one jurisdiction is applicable in another.

Having said that, I do think that the Canadians have always been extremely proud of leading on human rights issues. I mentioned the focus on gender. I think there is an opportunity to build on the legislation that has been put in place elsewhere to make sure that it is consistent, coherent, and far-reaching in tackling a level playing field for all companies operating everywhere.

**Mr. Peter Talibart:** Every minute that Canada does nothing proliferates an existing risk to the life savings of Canadian pensioners, many of whom have their life savings invested in public companies that don't know they should be doing something to address this issue. The effect on the market cap of a company when a catastrophic human rights event occurs in its supply chain is profound. It's a risk to value.

Our Canadian companies don't want to be supporting this, but they don't know what to do, so give them some guidance. Canadian companies have to make these disclosures anyway. That's benefiting the other countries that have passed these laws. Investors and consumers outside Canada have a better idea of the human rights risk profile of Canadian companies than Canadian consumers and investors do. It makes no sense. We actually don't have any time. We don't. We're behind on this.

**Mr. Mark Trachuk (Partner, Osler, Hoskin & Harcourt LLP, As an Individual):** I'll make a couple of really brief comments.

I think this is really an issue of corporate social responsibility. It's something that is talked about; these issues are talked about in the boardrooms of companies across Canada. I think that if we don't create some regime that's consistent with the highest standards of the world, we'll be seen as slipping behind in terms of the maturity and sophistication of our corporate law and the way our companies are run.

I think there's another issue that hasn't been addressed, although maybe in prior sessions it has. We are one of the leading economies in the world in the extractive sector, not just in mining in Canada, but in mining all around the world. Canadian companies are doing it, and we're the best in the world at it. It's rife with human rights abuses like this. We're starting to see class actions being brought in Canada against Canadian directors by former slaves of companies that have been operating in parts of the world where this kind of behaviour goes on.



I think that if we don't get out in front of this, we may find from a competition perspective and an economic and competitive perspective that we'll start to slip behind. It's very important, and it's something that most of our large companies are already complying with, frankly, because they are global in scope.

**Mr. Peter Talibart:** Is there still time?

**Ms. Cheryl Hardcastle:** Yes.

**Mr. Peter Talibart:** The United States has a law, which they haven't used very frequently, that allows their customs to seize goods at the border that are possibly made with forced or slave labour. The European Union is also very concerned about human rights and links it with market access. Canadian companies that aren't doing anything about this risk that market access.

If the United States starts to enforce this law more—several of my partners are ex-federal prosecutors in the U.S. who feel that this is going to happen—those laws can be weaponized as part of a trade dispute. A fantastic way to deny Canadian companies access to that market is to say, “We're not going to allow you to provide those goods into the United States unless we have some sort of guarantee that you don't have a bloody supply chain.”

There are all kinds of risks out there. It would take a small tweak of American law to do that. In the American system, as I put in my paper, there is systemic pressure already, despite the current regulatory regime. I think we'll regret it if we don't deal with it now.

• (1350)

**The Vice-Chair (Mr. David Sweet):** Ms. Berman, did you have a brief comment?

**Ms. Cindy Berman:** I just wanted to say that the Ethical Trading Initiative, in partnership with the British Retail Consortium.... Actually, our companies pushed very hard for the clause on transparency in supply chains. Last week, we were in Geneva for the UN Forum on Business and Human Rights. There were a number of very large French companies arguing how much they welcomed the French due diligence law, and there are other companies also saying that they actually need a level playing field.

To the comments that have been made, responsible business needs government to regulate in order for it to not be undercut by unscrupulous competitors. We know that there's a race to the bottom. In terms of labour standards, there is just-in-time instant production, and the prices of goods are getting lower and lower. Without government intervention to set a regulatory framework, it is extremely difficult for business to self-regulate.

**The Vice-Chair (Mr. David Sweet):** Thank you very much.

Mr. Tabbara.

**Mr. Marwan Tabbara (Kitchener South—Hespeler, Lib.):** Thank you very much.

Ms. Berman, you mentioned something in your testimony that was very interesting. I want to highlight it a bit more.

We've been focusing a lot on child labour and forced labour, but we haven't really focused on the family unit. You mentioned that adults are paid so little that they're unable to provide for their children the basic necessities and education, etc. That's where you

see a lot children being forced into these industries because of the circumstances that they're growing up in.

I've heard, too, and was reading previously, that often some organizations have cash transfer programs for the females in the family. Whether it's the mother, an older sister, or an aunt in the family, there are cash transfers, and that helps to really prioritize the family into getting these essential needs for their families so their children aren't forced into these programs.

Maybe you could elaborate on that a bit more and on whether you've heard of examples like this.

**Ms. Cindy Berman:** Yes, there have been some very successful experiments in cash transfers. Invariably, I think, the evaluations I've seen of it point to significant success and value for the families who are benefiting, but there are some risks that these are not long-term sustainable: that governments need to put in place social protection systems that enable people to access health care if there's a crisis, or to access education benefits or other benefits where they are vulnerable, and governments also need to demand that living wages or at least minimum wages be paid to adults and that appropriate regulatory frameworks are put in place.

I do think that cash transfers—both unconditional and conditional—in a number of jurisdictions have seen a decline in the incidence of child labour. We've just seen in Brazil that the Bolsa Familia, which has now been abolished, sadly, had a massive impact on reducing the incidence of child labour, but that was a fairly wide-ranging set of social protection mechanisms instituted by the government for extremely vulnerable poor families, and I would argue that those ultimately are the most sustainable.

**Mr. Marwan Tabbara:** Thank you.

My second question is for Mark Trachuk.

After legislation was passed in the U.K., did smaller companies follow the example of larger companies that complied with this legislation?

**Mr. Mark Trachuk:** Regarding the compliance, I think that's more of a question for Pete.

**Mr. Marwan Tabbara:** Peter, you talked about examples in the United States and the U.K., and you said that Australia is ahead of us. Can you tell us a little bit about the U.K. and some of the legislation they've passed and its results?

• (1355)

**Mr. Peter Talibart:** Do you mean in relation to the Modern Slavery Act?

**Mr. Marwan Tabbara:** Yes, that they've passed legislation.

**Mr. Peter Talibart:** This is a new thing, and companies are starting to comply. They are starting to put the statements up, led by the biggest companies, which take this issue very seriously. It is starting to focus directors' attention on the issue of slavery in their supply chains. I don't know how else to answer the question.

**Mr. Marwan Tabbara:** When the legislation was passed, a lot of the larger supply chains were following certain regulations. I'm asking whether the smaller supply chains were following those to reduce some of their...

Ms. Berman, you're nodding your head, so maybe I'll let you—

**The Vice-Chair (Mr. David Sweet):** We don't have enough time for anything but a very brief answer, Ms. Berman.

**Ms. Cindy Berman:** Very briefly, we've followed this very closely. We don't think.... The larger companies are taking this more seriously and they are addressing this, but the smaller companies are lagging behind. Some of them are B2B businesses and don't have reputations to defend, so they are less likely to be on the front foot on this agenda, but we see some progress being made.

**The Vice-Chair (Mr. David Sweet):** Thank you very much, Ms. Berman.

Mr. Anderson.

**Mr. David Anderson:** I'm going to follow up on the question that Mr. Tabbara just asked. I'm wondering about information. We're talking about following right through the supply chain, I guess to the lowest levels, but how do we get confirmation of information in places where there's no rule of law and the institutions and the enforcement structures are weak? Can both of you talk to that a bit?

**Ms. Cindy Berman:** What we're seeing is companies starting to put into their modern slavery statements that they are mapping their supply chains and understanding risks progressively down the supply chain. Obviously the risks are far greater where there are, as you say, failures in government legislation or application of the law and labour monitoring systems.

We've been arguing very strongly that human rights due diligence needs to include engagement with local stakeholders, local businesses and industry, trade unions, and civil society organizations from the south, from sourcing countries. They have to be part of the solution. This can't just work top down. The more we can engage with and empower local actors to take this issue seriously, the more likely we are to see long-term change.

**Mr. Peter Talibart:** I would agree with that. Companies are starting for the first time, really, to map their supply chains, to audit their major suppliers, and to investigate their suppliers—sometimes unannounced. They're changing their suite of contractual documents to oblige suppliers to comply with human rights. Some of them are creating hotlines that are actually available to employees of the suppliers to report violations.

**Mr. David Anderson:** I have another question. Doesn't that actually then give the advantage to the larger companies? To me, it seems to encourage corporate consolidation. Bigger companies have the capacity to do this kind of thing and small and medium-sized companies generally do not. Doesn't that just encourage more consolidation of business? I guess maybe you haven't seen that yet, but I would be interested to see if that's the impact.

**Mr. Peter Talibart:** That's why the legislation being passed tends to have financial thresholds, below which they don't apply.

**Mr. David Anderson:** I understand that.

**Mr. Peter Talibart:** I think the idea is that there's going to be a kind of an iterative process. The big companies are going to be the pathfinders and develop corporate best practices as their slavery statements get published—

**Mr. David Anderson:** Their corporate practices are not usually beneficial to those who are smaller than they are. Is there any assurance here that this is going to take place?

**Mr. Mark Trachuk:** One of the great subtle advantages of the U. K. Modern Slavery Act is that there's no bright line that you have to meet; you just have to tell people what you're doing. You can only do what your capacity allows you to do, so you're just reporting what you can do.

In theory, you could report that you're not doing anything, although we think that both the capital markets and the consumers won't see that as being very positive. You're not expected to be able to perform in the same way that a large company may be able to.

• (1400)

**Mr. David Anderson:** That would be different from France's law. Okay.

**Mr. Peter Talibart:** It has a financial piece.

**Mr. David Anderson:** Yes.

**Ms. Cindy Berman:** Could I make one suggestion?

**The Vice-Chair (Mr. David Sweet):** It will have to be the final one. Thank you.

**Ms. Cindy Berman:** One of the things we've been arguing is that government public procurement requirements might reach some of the smaller companies and suppliers.

Baroness Young has tabled a private member's bill in the House of Lords and the Commons to ask governments to ensure that their modern slavery legislation extends to public bodies too. We believe that public procurement contracts often address some of the smaller companies and those that aren't well-known brands and retailers like the big multinationals, and this would go a long way both to address governments, in order for them to model good practice in their own procurement practices, and also to address some of the companies that are smaller in the supply chain.

**The Vice-Chair (Mr. David Sweet):** Thank you very much to the witnesses. It's after two o'clock now, which is our usual adjournment time.

On behalf of the committee, I want to say thank you very much to the witnesses for the good work you're doing. We appreciate your knowledge in helping us to craft a report for the Government of Canada, and we really appreciate your being on the vanguard and making sure that you're doing the best you can to encourage people to craft legislation to protect children, as well as those who find themselves enslaved. On behalf of the committee, thank you very much.

Colleagues, we're adjourned.







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