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The Legal 500 Country Comparative Guides

Canada

ENVIRONMENTAL, SOCIAL AND GOVERNANCE

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This country-specific Q&A provides an overview of environmental, social and governance laws and regulations applicable in Canada.

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CANADA
ENVIRONMENTAL, SOCIAL AND GOVERNANCE

1. Climate – the law governing operations that emit Greenhouse Gases (e.g. carbon trading) is addressed by Environment and Climate Change international guides, in respect of ESG: a. Is there any statutory duty to implement net zero business strategies; b. Is the use of carbon offsets to meet net zero or carbon neutral commitments regulated; c. Have there been any test cases brought against companies for undeliverable net zero strategies; d. Have there been any test cases brought against companies for their proportionate contribution to global levels of greenhouse gases (GHGs)?

a. Is there any statutory duty to implement net zero business strategies;

The Canadian Net-Zero Emissions Accountability Act, which became law on June 29, 2021, enshrines in legislation the Canadian federal government's commitment to achieve net-zero emissions by 2050. However, at this time, there is no statutory duty on businesses to implement their own net zero strategies.

Under Canadian securities regulations, issuers must disclose all material information regarding their business and affairs. The fundamental principle is that issuers should provide all information that would be material to an investor's investment decision, including material information about environment and social issues. That said, there have been no separate specific requirements mandating environment and social-related disclosure. This will be changing in the near future, as the Canadian Securities Administrators ("CSA") announced (the "Climate Disclosure Proposals") in 2021 that new climate-related disclosure requirements were to be implemented in Canada due to an increase in investors' focus on climate-related risks, and to align Canada with foreign markets to streamline disclosure obligations. CSA National Instrument 51-107 develops mandatory ESG disclosure for federally-regulated financial institutions aligned with the Task Force on Climate-Related Financial Disclosure's framework. The Climate Disclosure Proposals would have required issuers to disclose 4 types of climate-related information beginning in 2024, including information regarding management of climate-related risks and opportunities, strategies and risk management of climate risks, as well as disclosing metrics used to assess climate-related risks and targets to be implemented by the company. This instrument also requires issuers to disclose greenhouse gas emissions, or provide an explanation as to why an issuer has chosen not to disclose this information, as well as disclose the reporting standard used for these calculations.

Since the CSA's Proposed Climate Disclosure Proposals, the International Sustainability Standards Board (ISSB) issued a climate-related disclosure standard as well as a proposed general standard for sustainability-related financial information ("ISSB Standards") in June 2023 as global baseline disclosure standards. In March 2024 the SEC also published a rule that would require registrants to provide certain climate-related information in their registration statements and annual reports.

In March 2024 the Canadian Sustainability Standards Board (CSSB) issued for consultation (open to June 2024) proposed climate-related disclosure and sustainability-related disclosure standards ("CSSB Proposals"). The CSSB Proposals broadly align with the ISSB Standards with a few proposed modifications for the Canadian context.

The CSA has been generally supportive of both the ISSB Standards as global baseline disclosure requirements and the CSSB's work. The CSA has indicated that once the CSSB's consultation is complete and the CSSB standards are finalized, it will seek comment on a revised set of mandatory climate-related disclosure standards. The CSA will consider the finalized CSSB standards and may make further changes appropriate

for the Canadian capital markets. The CSA is also monitoring the SEC's published rule and other international developments.

b. Is the use of carbon offsets to meet net zero or carbon neutral commitments regulated;

Use of carbon offsets to maintain compliance with GHG emissions reduction requirements for industries in Canada is highly regulated at both the federal and provincial levels. The Canadian Net-Zero Emissions Accountability Act committed Canada to achieving net-zero emissions of GHG by 2050, in accordance with Canada's commitments under the Paris Agreement. There are also various regulatory mechanisms in Canada for generating carbon credits or offsets and for their use in voluntary and mandatory carbon markets.

Federally, Canada's GHG Offset Credit System enables project proponents to generate federal offset credits if they register and implement projects meeting requirements in the Canadian Greenhouse Gas Offset Credit System Regulations and an applicable federal GHG offset protocol for measuring GHG reductions. Offset credits generated represent verified GHG reductions achieved by a project either by reducing GHG emissions or removing GHG from the atmosphere. Offset credits can be sold and used for compliance by facilities covered in the federal Output-Based Pricing System, or sold and used by others who are looking to meet voluntary climate targets or commitments.

For example in Alberta, the Technology Innovation and Emissions Reduction Regulation governs the province's carbon pricing and emissions trading system. Alberta's system is also Canada's largest and longest operating carbon market. Emission offset projects must meet requirements under the regulation, and any emission offsets must be quantified using Alberta's quantification protocols. Emission offsets verified in Alberta' registry may then be used or sold to another party.

Provinces such as Manitoba which do not have a carbon pricing system that meets or exceeds the federal requirements will be subject to the federal GHG Offset Credit System. In Alberta, the federal fuel charge applies alongside the provincial carbon pricing system. In British Columbia, only the provincial Output-Based Pricing System for carbon pricing applies.

c. Have there been any test cases brought against companies for undeliverable net zero strategies;

To date, there have been no test cases brought in Canada against companies for undeliverable net zero strategies. However, these actions may not be far off. Similar to the principles underpinning the ClientEarth claim brought in the UK against the directors of Shell, Canadian corporate statues require company directors to act in honesty and in good faith, with a view to the best interests of the corporation. Directors are required to exercise care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances. A derivative action similar to the ClientEarth claim in the UK is possible in Canada. The outcomes of the various ESG-related litigation and regulatory action being brought against organizations across the world will likely influence claims brought in Canada regarding similar actions or inactions.

d. Have there been any test cases brought against companies for their proportionate contribution to global levels of GHGs?

To date, there have not been any such test cases commenced in Canada. Canadian climate change litigation is in its early stages in comparison to other jurisdictions. However, funding of private class actions around environmental issues is top of mind for stakeholders in various provinces within Canada – including municipalities.

In the province of British Columbia, the City of Vancouver voted to allocate nearly $700,000 in funds in July 2022 toward a future potential class action lawsuit against fossil fuel companies in Canada. The decision on the municipality's member motion, part of the "Sue Big Oil" campaign that aims to bring class action lawsuits against large energy companies, found that municipalities will likely have to spend billions of dollars annually to mitigate the effects of, and adapt to, climate change-related, including implementing sea-wall repairs or building infrastructure to protect residents from extreme temperatures. As of March 2023, the future of this motion remains unclear, as the funding was not included within the City's operating budget. Other Canadian municipalities have passed motions exploring options for mitigation of climate change-related costs from oil and gas companies, however Canadian courts have not yet been asked to rule in climate-related litigation threatened by local governments.

2. Biodiversity – are new projects required to demonstrate biodiversity net gain to receive development consent?

In Canada, the federal government is responsible for protecting the biodiversity of oceans, waters and lands under its jurisdiction. This responsibility extends to aquatic species, migratory birds, and federally listed species at risk. Although Canada does currently not have

overarching biodiversity legislation at the federal level, there are several pieces of relevant federal legislation which function in protecting biodiversity. Provincial and territorial governments are the primary custodians of the natural resources within their boundaries, and some have developed their own biodiversity strategies.

While there is currently no requirement for projects in Canada to demonstrate biodiversity net gain, the federal government issued a draft Offsetting Policy for Biodiversity in 2022 ("Policy"). Stakeholder consultation relating to the Policy ended in February 2023. The Policy identifies "no net loss" ("NNL") as the goal for all project developments in Canada that adversely affect biodiversity under Environment and Climate Change Canada ("ECCC") wildlife mandate. Aligned with international standards, the Policy describes an offset designed to achieve NNL or net gain for biodiversity is specifically as a "biodiversity offset."

The Policy would replace the Operational Framework for Use of Conservation Allowances, published in 2012 in Canada, which set parameters, based on existing legislation, for how and when conservation allowances should be used by the federal government in order to protect Canadian species. This Policy would apply to all residual adverse effects and cumulative effects of development in Canada where ECCC has a role within its mandate and it has been determined that offsetting is required. Legislation and policies where ECCC have a role include:

- Impact Assessment Act and Canadian Environmental Assessment Act, 2012, as well as non-federal impact and environmental assessment processes which involve the ECCC;
- Species at Risk Act;
- Migratory Birds Convention Act;
- Canada Wildlife Act; and
- Federal Policy on Wetland Conservation.

The Policy establishes a mitigation hierarchy, promoting project development designs with the least environmental effect. It would function to eliminate as many potential adverse effects through the impact assessment process. Offsets would be used to address residual adverse effects of development, including cumulative adverse effects, after it has been determined that all options in the previous steps of the mitigation hierarchy have been fully considered and applied.

Biodiversity offsets would be required to balance against residual adverse effects such that NNL is achieved. In certain situations, biodiversity offsets must achieve net gains in biodiversity.[1]

Requirements for projects in Canada to achieve NNL goals for biodiversity, or potentially net gains, will depend on the review of stakeholder engagement and implementation of the policy by the federal government of Canada.

Footnote(s):

1 https://www.canada.ca/en/environment-climate-change/services/biodiversity/offsetting-policybiodiversity.html#toc9

3. Water – are companies required to report on water usage?

Water resources are owned by the provinces and territories which may require a licence or permit to use water for certain non-domestic purposes (e.g. industrial processes). In such cases, the terms of the licence or permit typically require the holder to report the volumes of water taken on a monthly or annual basis.

In Ontario, the Reporting of Energy Consumption and Water Use Regulations, O.Reg. 506/18 require owners of certain building types and sizes (50,000 square feet and larger), unless exempted, to report annual energy and water usage for the building

There is potential for additional future mandatory requirements regarding water usage in Canada, particularly in light of Canada's recent recognition that every individual in Canada has a right to a healthy environment and that the federal government has a duty to protect that right when administering the Canadian Environmental Protection Act, 1999, SC 1999, c 33.

4. Forever chemicals – have there been any test cases brought against companies for product liability or pollution of the environment related to forever chemicals such as Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)?

In 2021, 69 landowners commenced a class action against the National Research Council of Canada, alleging that it allowed PFAS to enter the surface water and groundwater at its National Fire Laboratory facility thereby contaminating the soil and groundwater on the plaintiffs' properties adjacent to the facility. The plaintiffs further alleged that the contaminants had entered their drinking water. The plaintiffs' application to certify the action as a class proceeding was allowed and the litigation is proceeding.

5. Circularity – the law governing the waste hierarchy is addressed by the Environment international guide, in respect of ESG are any duties placed on producers, distributers or retailers of products to ensure levels of recycling and / or incorporate a proportionate amount of recycled materials in product construction?

The federal government has jurisdiction over the disposal and recycling of hazardous materials across provincial and international borders under the Canadian Environmental Protection Act, 1999, SC 1999, c 33, the Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations, SOR/2005-149. This legislation outlines notification requirements, as well as certain disposal and recycling operations requirements. However, responsibility for the end of life of most products in Canada is governed at the provincial level, through recycling regulations under environmental protection statutes.

Provincial recycling schemes largely assign responsibility for the end of life of products at the point of production or sale. This is described in Canada as "Extended Producer Responsibility" or "EPR". Depending on the province and product at issue, manufacturers, brand holders or sellers of designated products may be required to financially and operationally participate in waste management and reduction plans, meet various reporting and auditing obligations, and raise public awareness of waste management in order to sell their products within that province. Products included within the provincial EPR schemes can include, among others: paint; electronic and electrical products; tires; packaging and paper products; gasoline and glycol; beverage containers; and batteries. Most provincial recycling schemes allow the manufacturers, brand holders or sellers – as applicable – to hire an approved third party to carry out their end of life product responsibilities.

6. Plastics – what laws are in place to deter and punish plastic pollution (e.g. producer responsibility, plastic tax or bans on certain plastic uses)?

At the federal level, as part of Canada's plan to achieve zero plastic waste by 2030, plastic packaging in Canada will be required to contain at least 50% recycled content by 2030. The federal government has also banned six categories of plastics – checkout bags, cutlery, foodservice ware, stir sticks, and straws – from being manufactured or imported for sale in Canada pursuant to the Single-use Plastics Prohibition Regulations, SOR/2022-138. This ban represents potentially the first action toward the federal government's intent to use federal pollution prevention legislation to target substances viewed as "toxic", and regulate the use of these substances as a means of reducing their prevalence in recycling schemes and their polluting presence in the environment.

This effort by the federal government was successfully challenged in court by a coalition of industry participants. The government has appealed the lower court decision that stuck down the order that declared plastic manufactured items to be toxic. The decision may also impact the Canadian government's efforts to ban single-use plastics.

Provincial, territorial and municipal governments are also targeting plastic pollution. At the provincial level, plastics are included in many of the recycling and EPR regulatory schemes and some provinces and territories have banned the use of single-use plastic shopping bags (e.g. Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Yukon) while others have signalled their intentions to do likewise. Certain municipalities have enacted by-laws banning the use of certain plastic products such as shopping bags, single-use plates, utensils and drinking straws.

7. Equality Diversity and Inclusion (EDI) – what legal obligations are placed on an employer to ensure equality, diversity and inclusion in the workplace?

Each Canadian province has its own Human Rights legislation which states that every person has a right to equal treatment with respect to employment without discrimination because of protected grounds such as race, ancestry, place of origin, colour, ethnic origin, citizenship, creed (religion), sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. While the protected grounds differ slightly between provinces, they are generally aligned in some fashion with the above.

In addition, the Province of Ontario has put additional protections into place through the Accessibility for Ontarians with Disabilities Act (AODA). While AODA is not just restricted to the protection of employees, employers have various responsibilities under the legislation in order to ensure accessibility for disabled employees.

At the federal level (i.e. federally regulated entities such as banks, telecoms, airlines and railways, as well as public sector federal government employers), there are

added obligations under the Employment Equity Act (the "Act"). The Act mandates the identification and elimination of barriers in the workplace for four identified groups of individuals: (i) aboriginal peoples (Indians, Métis and Inuit); (ii) visible minorities; (iii) persons with disabilities; and (iv) women. Under both the Act, as well as provincial Human Rights legislation across Canada, permission has been legislatively granted for the creation of "special programs" to increase representation of individuals within protected groups, similar to the U.S. concept of affirmative action.

Similarly, Canadian corporations which are governed by the Canada Business Corporations Act, are required to provide shareholders with information on the corporations' practices and policies related to diversity on the board and within senior management. Again, the groups of individuals which must be tracked for this purpose include: (i) aboriginal peoples; (ii) visible minorities; (iii) persons with disabilities; and (iv) women.

Finally, almost all other corporate securities legislation in Canada requires that publicly traded companies track and report on the number of women who hold Board seats or are in executive positions within the companies.

8. Workplace welfare – the law governing health and safety at work is addressed in the Health and Safety international guide, in respect of ESG are there any legal duties on employers to treat employees fairly and with respect?

Most occupational health and safety legislation (OHS) in Canada contains provisions which are intended to prevent harassment or violence against employees. The harassment protected against under OHS legislation is not the same as the harassment protected against under human rights legislation. Human rights legislation is intended only to protect against harassment and discrimination on the basis of the protected grounds set out above. OHS legislation, on the other hand, is intended to protect employees from all other types of harassment in the workplace.

Harassment is defined under the legislation as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. Examples of behaviours that may be considered harassment include, but are not limited to, direct or indirect comments, actions, or tactics such as verbal or psychological abuse used to harm an individual or an attempt to harm an individual. Harassment or bullying can involve repeated incidents but can be one single incident. Harassment can include sexual harassment, but it is not limited to same. Some Canadian provinces, such as Ontario, also require the creation of distinct Workplace Harassment and Violence Prevention policies and underlying programs.

There are currently no specific ESG legal duties on employers to treat employees fairly and with respect.

9. Living wage – the law governing employment rights is addressed in the Employment and Labour international guide, in respect of ESG is there a legal requirement to pay a wage that is high enough to maintain a normal standard of living?

There is no requirement in Canada for employers to pay a living wage. All provinces however, have minimum wage rates for employees.

10. Human rights in the supply chain – in relation to adverse impact on human rights or the environment in the supply chain: a. Are there any statutory duties to perform due diligence; b. Have there been any test cases brought against companies?

a. Are there any statutory duties to perform due diligence;

There are currently no statutory duties to perform due diligence on the supply chain relating to human rights. When the federal Fighting Against Forced Labour and Child Labour in Supply Chains Act becomes law (expected shortly) companies subject to that legislation will be forced to examine their supply chains in order to comply with their statutory reporting requirements (see response to Question 21 below).

b. Have there been any test cases brought against companies?

No.

11. Responsibility for host communities, environment and indigenous populations – in relation to adverse impact on human rights or the environment in host communities: a. Are there any statutory duties to perform due diligence; b. Have

there been any test cases brought against companies?

a. Are there any statutory duties to perform due diligence;

There are no statutory duties to perform due diligence, per se. However, where projects require federal or provincial regulatory permits to proceed, the applicable legislation will require impact assessment reports be included in the applications for such permits. These reports will identify potential environmental and social impacts on host communities, including impacts to indigenous rights. Consultation with indigenous groups is also typically required.

b. Have there been any test cases brought against companies?

Companies are frequently sued for environmental and social impacts caused to the communities in Canada in which they conduct their operations.

More recently, litigation has been commenced against Canada companies in Canada for wrongs alleged to have been committed at their foreign operations.

In 2013, members of an indigenous group in Guatemala sued Hudbay Minerals in Ontario over alleged human rights abuses (murder, assault and rape) committed by mine company security personnel at a former mining project in Guatemala owned and operated by a subsidiary of a company subsequently acquired by Hudbay. Hudbay's attempts to have the actions dismissed on procedural grounds were dismissed by the Ontario Superior Court of Justice (Choc. v. Hudbay Minerals Inc., 2013 ONSC 1414). This marked the first time foreign claimants were allowed to pursue a lawsuit against a Canadian company in Canada for alleged human rights abuses.

In 2020, the Supreme Court of Canada considered whether a lawsuit against a Canadian mining company for alleged violations of customary international law in Eritrea could go forward. Nevsun Resources is a Canadian company and the owner of the shares of a company that owned and operated a mine in Eritrea. The plaintiffs were workers at the mine who alleged they were subjected to harsh and dangerous working conditions. They sued Nevsun, alleging it was responsible for slavery; forced labour; cruel, unusual or degrading treatment; or crimes against humanity and said these were violations of "customary international law" which was incorporated into the law of Canada. Nevsun applied to have the claims dismissed on several grounds, primarily that the "act of state doctrine" stripped the court in Canada of jurisdiction and that the customary international law claims disclosed no reasonable cause of action. The lower courts dismissed Nevsun's motion to strike and the Supreme Court of Canada dismissed Nevsun's appeal and allowed the lawsuit to proceed (Nevsun Resources Ltd. v. Araya, 2020 SCC 5). The claims were settled in late 2020.

12. Have the Advertising authorities required any businesses to remove adverts for unsubstantiated sustainability claims?

The Competition Bureau has required companies to take action with respect to unsubstantiated sustainability claims. These include:

a. Keurig Canada Inc. – Registered Consent Agreement – Competition Tribunal (cttc.gc.ca)) (2022), in which Keurig reached an agreement with the Bureau to resolve concerns over claims made about the recyclability of single-use Keurig K-Cup pods.
b. Volkswagen and Audi and Porsche – Registered Consent Agreement – Competition Tribunal (ct-tc.gc.ca) (2018), in which the vehicle manufacturers entered into an agreement with the Bureau to address concerns about false or misleading marketing claims about emissions from certain vehicles with 3.0 litre diesel engines.

13. Have the Competition and Markets authorities taken action, fined or prosecuted any businesses for unsubstantiated sustainability claims relating to products or services?

The Competition Bureau has registered consent agreements with businesses concerning sustainability claims. Once registered with the Competition Tribunal, these have the force of a court order. These include:

a. Keurig Canada Inc. – Registered Consent Agreement – Competition Tribunal (cttc.gc.ca)) (2022), in which Keurig reached an agreement with the Bureau to resolve concerns over claims made about the recyclability of single-use Keurig K-Cup pods.
b. Volkswagen and Audi and Porsche – Registered Consent Agreement – Competition Tribunal (ct-tc.gc.ca) (2018), in which the vehicle manufacturers entered into an agreement with the Bureau to address concerns about false or misleading marketing claims about emissions from certain vehicles

with 3.0 litre diesel engines.

In November 2022, the Competition Bureau launched an inquiry into statements to the public by the Canadian Gas Association that natural gas is “clean” and “affordable”. The inquiry arose from a complaint filed with the Bureau by various health advocates, together with the Canadian Association of Physicians for the Environment.

In September 2022, the Competition stated that it had started an inquiry into marketing statements a large Canadian bank had made about its climate action. The inquiry is a response to complaints from various environmental groups that the bank had engaged in “greenwashing”.

14. Have there been any test cases brought against businesses for unsubstantiated enterprise wide sustainability commitments?

There is no precedent for this kind of case yet in Canada.

15. Is there a statutory duty on directors to oversee environmental and social impacts?

Not specifically. The Supreme Court of Canada decisions (Peoples Department Stores Inc (Trustee of) v Wise; and BCE Inc v 1976 Debenture Holders) have affirmed that in Canada the board has the duty to act in the best interests of the corporation and does not have the legal duty to act in the best interests of any particular stakeholder group (e.g. shareholders). These decisions have underlined a legal shift from shareholder primacy to stakeholder primacy.

These cases set out certain factors for directors and officers to consider with a view to the best interests of the corporation, which have since been codified in the Canada Business Corporations Act (“**CBCA**”). These considerations include (but are not limited to):

a. the interests of
    i. shareholders,
    ii. employees,
    iii. retirees and pensioners,
    iv. creditors,
    v. consumers, and
    vi. governments;
b. the environment; and
c. the long-term interests of the corporation.

(CBCA Section 122(1.1).

16. Have there been any test cases brought against directors for presenting misleading information on environmental and social impact?

We are not aware of any such cases.

17. Are financial institutions and large or listed corporates required to report against sustainable investment criteria?

On March 20, 2024, the Office of the Superintendent of Financial Institutions Canada (OSFI) revised Guideline B-15: Climate Risk Management (Guideline B-15), which guides federally regulated financial institutions (“**FRFIs**”), including Canada’s major banks, in managing climate change related risks within the Canadian financial system.

The Guideline generally requires that FRFIs (1) implement certain governance and risk management practices within their risk analysis and business models and (2) disclose certain climate-related financial information.

The Guideline sets out certain minimum mandatory climate-related financial disclosure expectations for FRFIs. The March 2024 updates to the Guideline require more detailed minimum mandatory disclosures than was previously contemplated, which include, for e.g.:

- Describe the governance body(ies) (e.g., board of directors, committee, other) or individual(s) responsible for oversight of climate-related risks and opportunities
- Describe management’s role in monitoring, managing, and overseeing climate-related risks and opportunities.
- Describe the climate-related risks and opportunities the FRFI has identified that could reasonably be expected to affect its cash flows, access to finance or cost of capital in the short, medium and long-term.
- Disclose the FRFI’s Scope 1 and Scope 2 greenhouse gas (GHG) emissions (absolute basis) for the period, including the measurement approach and reporting standard used to calculate and disclose GHG emissions.
- Disclose the FRFI’s Scope 3 greenhouse gas (GHG) emissions for the period (absolute basis), and the related risks, including the measurement approach and reporting standard used to calculate and disclose GHG emissions.

- Disclose any quantitative and qualitative climate-related targets the FRFI has set, including information about the FRFI's approach to setting and reviewing each target and how it monitors progress.
- Disclose cross-industry metrics, including:
    - the percentage of assets or business activities vulnerable to climate-related transition risks and climate-related physical risks;
    - the percentage of assets or business activities aligned with climate-related opportunities;
    - the amount of capital expenditure deployed towards climate-related risks and opportunities;
    - internal carbon pricing application; and
    - the percentage of Senior Management remuneration in the period that is linked to climate-related considerations.

The Guideline requires FRFIs to provide climate-related financial risk disclosures on a yearly basis, within 180 days from their fiscal year-end as early as after the end of the FRFI's 2024 fiscal year (Scope 3 GHG Emissions at the end of the FRFI's 2025 fiscal year). At some point, banks will be looking to their borrowers to provide information the banks will need to determine their Scope 3 GHG Emissions.

OSFI has also instituted a new annual Climate Risk Returns process that will collect standardized climate-related data on emissions and exposures from FFRIs to enable OSFI to carry out evidence-based policy development, regulation, and prudential supervision as it pertains to climate risk management. The Climate Risk Returns collect data on: asset exposures that are subject to physical risk, by geophysical location; and absolute greenhouse gas (GHG) emissions (Scopes 1, 2 and 3). The data collection is confidential and will not be released publicly.

The Climate Risk Returns must be completed annually, on a fiscal year-end basis and filed within 180 days of the fiscal year-end date. The requirement to file a Climate Risk Returns begins as early as October 31, 2024 for certain FFRIs.

18. Is there a statutory responsibility on businesses to report on managing climate related financial risks?

At present, there is no specific statutory requirement for business to report on climate related financial risks in Canada.

However, on 18 October 2021, the Canadian Securities Administrators (CSA) published a proposed National Instrument 51-107 Disclosure of Climate-related Matters and its proposed Companion Policy 51-107CP (the "**Climate Disclosure Proposals**") for comment. The Climate Disclosure Proposals would require disclosure based on recommendations of the Task Force on Climate Related Financial Disclosures (TCFD).

Since the CSA's proposed Climate Disclosure Proposals, the International Sustainability Standards Board (ISSB) issued a climate-related disclosure standard as well as a proposed general standard for sustainability-related financial information ("ISSB Standards") in June 2023 as global baseline disclosure standards. In March 2024 the SEC also published a rule that would require registrants to provide certain climate-related information in their registration statements and annual reports.

In March 2024, the Canadian Sustainability Standards Board (CSSB) issued for consultation (open to June 2024) proposed climate-related disclosure and sustainability-related disclosure standards ("CSSB Proposals"). The CSSB Proposals broadly align with the ISSB Standards with a few proposed modifications for the Canadian context.

The CSA has been generally supportive of both the ISSB Standards as global baseline disclosure requirements and the CSSB's work. The CSA has indicated that once the CSSB's consultation is complete and the CSSB standards are finalized, it will seek comment on a revised set of mandatory climate-related disclosure standards. The CSA will consider the finalized CSSB standards and may make further changes appropriate for the Canadian capital markets. The CSA is also monitoring the SEC's published rule and other international developments

While specific disclosure requirements on climate related financial risks is being developed, certain general securities laws require disclosure if climate related financial risks rise to the threshold of material risk. See CSA Staff Notice 51-333 (Environmental Reporting Guidance) and CSA Staff Notice 51-358 (Reporting of Climate Change-related Risks).

19. Is there a statutory responsibility on businesses to report on energy consumption?

Relevant rules, if any, would be those arising under various provincial and federal regulatory requirements

relevant to each industry. For e.g., owners of certain buildings are required to report their energy and water usage to the Ministry of Energy each year in Ontario under the Electricity Act. However, there is no new "ESG" requirement in this area.

20. Is there a statutory responsibility on businesses to report on EDI and / or gender pay gaps?

Diversity on boards and in senior management is being reviewed by corporate regulators and stakeholders and the legal and "soft-law" requirements have and are continuing to evolve.

Since 2014 TSX-listed corporations have been required to make diversity-related disclosure in their annual disclosure documents on a "comply or explain" basis, including:

- on their policies and targets regarding the representation of women on the board of directors and in executive positions;
- how representation of women is taken into account in selecting board and executive officer candidates;
- gender representation on the board and in executive officer positions; and term limits.

See also National Instrument 58-101 of the Canadian Securities Administrators (CSA) Disclosure of Corporate Governance Practices (NI 58-101).

Public corporations governed by the CBCA have been required to make diversity-related disclosure regarding women, Indigenous peoples, persons with disabilities and members of visible minorities (designated groups) since 2020 (CBCA Section 172.1) on a "comply or explain" basis. These requirements include disclosure of term limits or other board renewal mechanisms, a description of written diversity policies for the selection of individuals from the designated groups as board nominees and a description of progress made in achieving the policy's objectives, whether the level of representation of designated groups on the board or in senior management is considered in appointing new candidates, whether targets have been established for representation of the designated groups on the board and in senior management as well as progress towards those targets, and the number of members of each of the designated groups on the board and in senior management. New guidelines for making this disclosure were published by Corporations Canada in February 2022.

21. Is there a statutory responsibility to report on modern day slavery in the supply chain?

At present, Canada does not have any statute requiring reporting of modern slavery. However, the Fighting Against Forced Labour and Child Labour in Supply Chains Act is currently on its third reading in Canada's Parliament and is expected to become law shortly. If this legislation is enacted, public reporting obligations will start in mid-2024 and apply to a company's previous financial year.

As currently drafted, the legislation will apply to entities producing, selling, distributing or importing goods in Canada where the company is listed on a Canadian stock exchange or has a place of business in Canada, does business in Canada or has assets in Canada and that meets at least two of the following conditions: has at least $20 million in assets, has generated at least $40 million in revenue and employs an average of at least 250 employees.

The private sector annual reports must include the following information:

- The entity's structure, activities and supply chains
- The entity's policies and due diligence processes in relation to forced labour and child labour
- The parts of its business and supply chains that carry a risk of forced labour or child labour being used and the steps the company has taken to assess and manage that risk
- Any measures taken to remediate any forced labour or child labour
- Any measures taken to remediate the loss or income to the most vulnerable families that results from any measure taken to eliminate the use of forced labour or child labour in its activities and supply chains
- The training provided to employees on forced labour and child labour and
- How the entity assesses its effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chain

The proposed legislation does not make it an offence to produce, sell, distribute or import goods produced by forced labour or child labour. It only imposes reporting obligations and makes it an offence for failing to report in the prescribed manner.

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