

Thoughts on Canada's National Standard on Responsible Business Due Diligence & Reporting: the Chair's Perspective

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Reporting of Canadian Firms Active Abroad

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**"Update on Canada's Responsible Business Conduct Due
Diligence & Reporting Standard for Canadian Firms Active
Abroad"**

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About Kernaghan Webb

- Kernaghan Webb is an Associate Professor in Toronto Metropolitan University's Law and Business Department. He holds Bachelors, Masters, and PhD degrees in law.
- He is also the Director of the Toronto Metropolitan University Institute for the Study of Corporate Social Responsibility (CSR).
- Dr. Webb's teaching, research and practice has focused on innovative approaches to regulation.
- Dr. Webb was a Special Advisor to the UN Global Compact (UNGC), and represented the UNGC in the ISO 26000 development process.
- Dr. Webb is:
 - the Chair of the committee developing Canada's national standard on due diligence and reporting standard for Canadian firms operating abroad;
 - the Chair of ISO TC 324 WG 1 (sharing economy);
 - the Chair of the ISO 26000 (social responsibility) Canadian mirror committee; and
 - member of CSA's Strategic Steering Committee on Organizational Management & Sustainability.He has been the recipient of national and international awards in recognition of his work.
- Professor Webb was previously Chief of Research and Senior Legal Policy Advisor for the federal Office of Consumer Affairs.
- Dr. Webb has published extensively on regulatory and CSR issues, and his work on ***due diligence as it pertains to regulatory offences*** has been cited and followed by the Supreme Court of Canada.
- Dr. Webb has been an advisor to, a consultant for, on the board/committee of, or otherwise represented a wide number of government departments/agencies, private sector organizations, multi-stakeholder organizations and civil society organizations on issues associated with public policy, law, and regulation.

From the Global Affairs Canada Responsible Business Conduct strategy (2022 – 2027)....

“The Strategy will be achieved through three mutually reinforcing components.....

Increase uptake of RBC with a focus on due diligence and accountability. This includes providing Canadian companies active abroad with the tools they need to mitigate risks and succeed. This includes new digital tools, a due diligence reporting standard.....”

- “Action” “Standard on due diligence reporting....”
- “Due diligence standard” “Working with the Canadian General Standards Board and other partners, and complementing Canada’s commitment to enact legislation to eradicate forced labour from Canadian supply chains, the Government of Canada will develop a RBC due diligence standard. The standard will complement existing international and Canadian reporting frameworks, and provide a common set of indicators for Canadian companies to account for how they address the actual and potential negative impacts of their business activities. Incentives will be considered to promote early adoption and uptake.....”
- “...Develop a standard for due diligence reporting based on global and Canadian best practice, including a simplified, intuitive set of indicators for companies to track how they address certain risks, and ultimately strengthen their accountability and transparency...”

Overall approach

The standard is intended to assist Canadian firms active abroad in addressing their environmental, social and economic impacts in a duly diligent manner (RBC due diligence to mitigate ESE risk and negative impacts), and to report on their approach and performance in a range of areas related to RBC, such as: respect for human and worker rights (including upholding the rights of Indigenous persons), combatting discrimination/inequality, taking action on climate change, inclusive trade, combatting bribery, ensuring cyber-security, and protecting consumers.

Value proposition of CGSB Standard on Responsible Business Due Diligence & Reporting for Canadian firms active abroad: There exists an evolving array of relevant laws, standards, principles etc. pertaining to due diligence and reporting. The standard is intended to align with these laws, standards, principles, etc., and not replicate them. The standard is intended to convey to firms what is involved in due diligence and reporting (such as the common elements, and why due diligence and reporting are important), thereby providing firms with the capability to customize their approach to due diligence and reporting based on the diversity of laws and standards that apply to them, given their unique operational characteristics and set of risks and impacts. ["concierge"]

Defining due diligence in responsible business conduct context

The OECD defines due diligence as *an on-going, proactive and reactive process through which companies can identify and address actual or potential risks in order to prevent or mitigate risks of contributing to adverse impacts associated with their activities or sourcing decisions.*

In the context of discussions of responsible business decision making and action, the OECD stipulates that due diligence involves:

- embedding responsible business conduct in a company's enterprise policy and management system;
- identifying and assessing potential and actual adverse impacts (risks and harms) in a company's own operations, its supply chain, and business relationships;
- ceasing, preventing or mitigating harm in the enterprise's own operations, its supply chain and business relationships;
- tracking implementation and results;
- communicating internally and externally how the impacts are being addressed; and
- providing for or cooperating in the provision of remediation when appropriate.

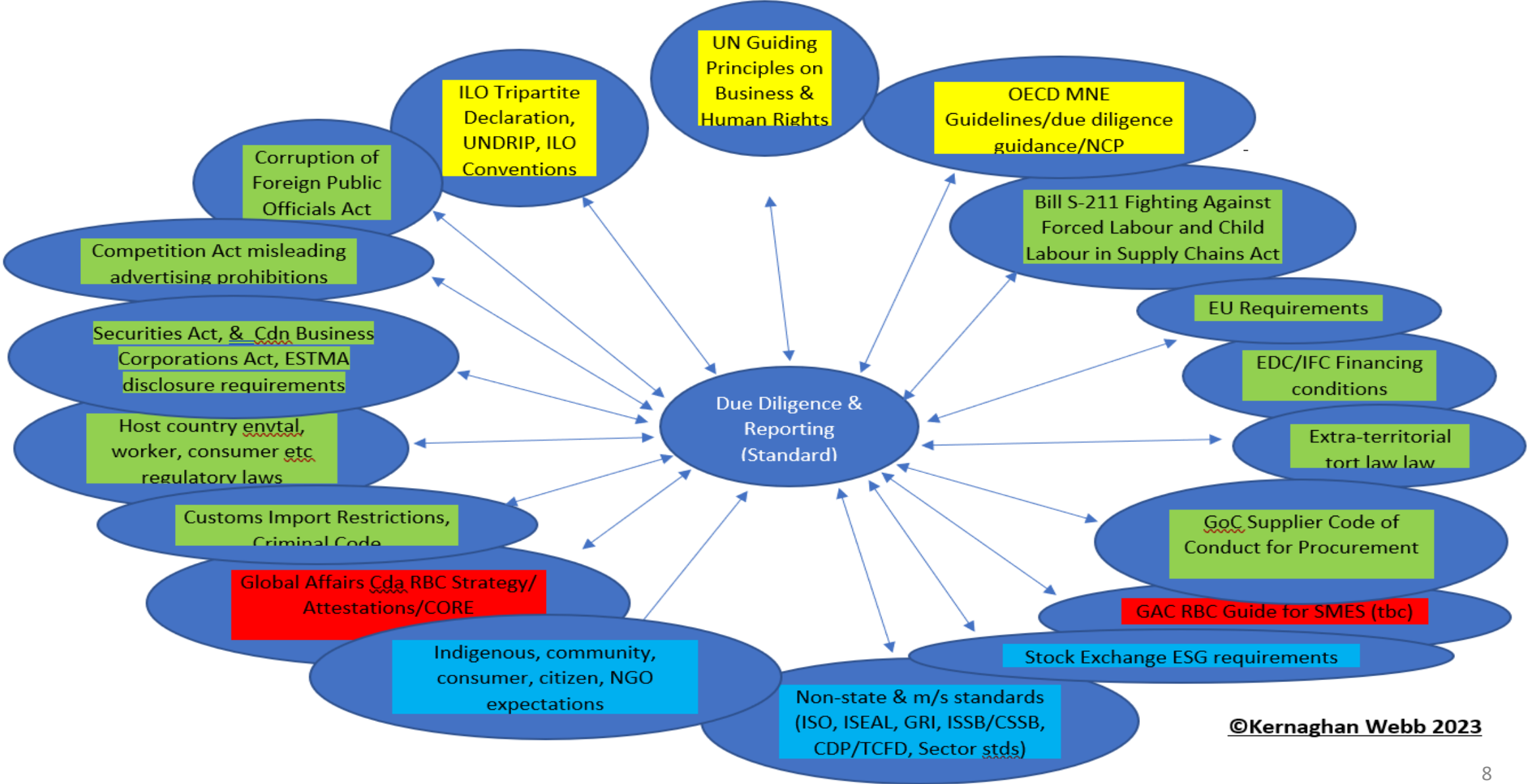
Canadian firms active abroad?

- ***Canadian company***
- ***regardless of size***
- ***regardless of sector***
- ***active in any non-Canadian jurisdiction***
- ***Canadian company*** "active abroad" could end up being defined in the standard using language such as:
 - "a commercial entity that is incorporated or formed by or under an Act of Parliament or of the legislature of a province, or that is otherwise formed in Canada, that operates abroad, and includes a entity that it controls and that operates abroad. A Canadian company could be said to "control" an entity directly or indirectly."

Some factors bearing on a firm's due diligence approach

- size of firm (bearing on capacity and influence)
- products/services/activities of firm
- distinctive significant potential and actual environmental, social, economic risks/impacts of firm (i.e., “risk profile”)
 - to the firm, and
 - to the stakeholders and interests affected by the firm's decisions and actions
- industry sector (e.g., maturity, role of industry association)
- jurisdictions/sub-jurisdictions where firm is active (e.g., unique jurisdictional risk/impact characteristics, socio-political-legal context)
- modes of operation of firm in particular countries (e.g., subsidiary, contractor, sub-contractor, supplier?)
- drivers of firm (e.g., investors, lenders, insurers, communities, workers, customers, governments, non-governmental organizations)
- Evolving array of applicable laws, inter-governmental instruments, non-state instruments and programs

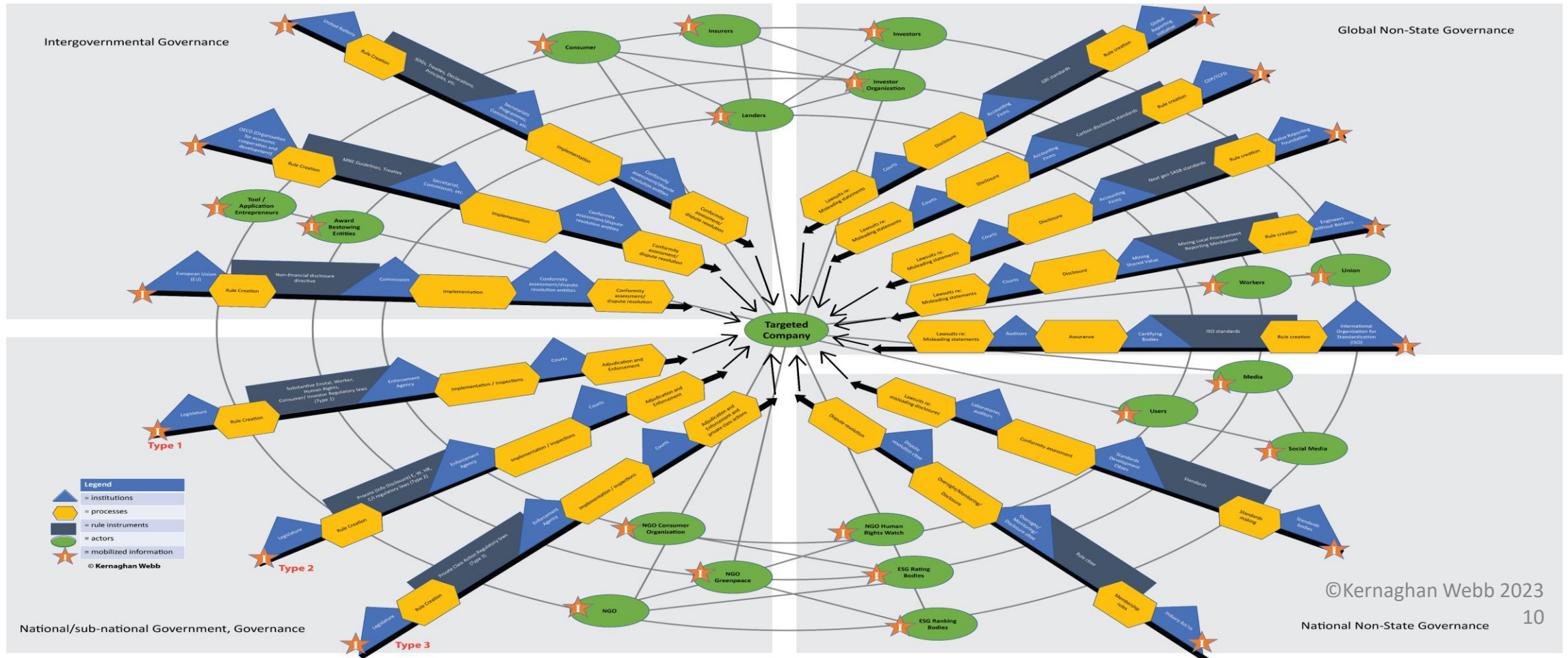
Array of instruments relevant to due diligence/reporting



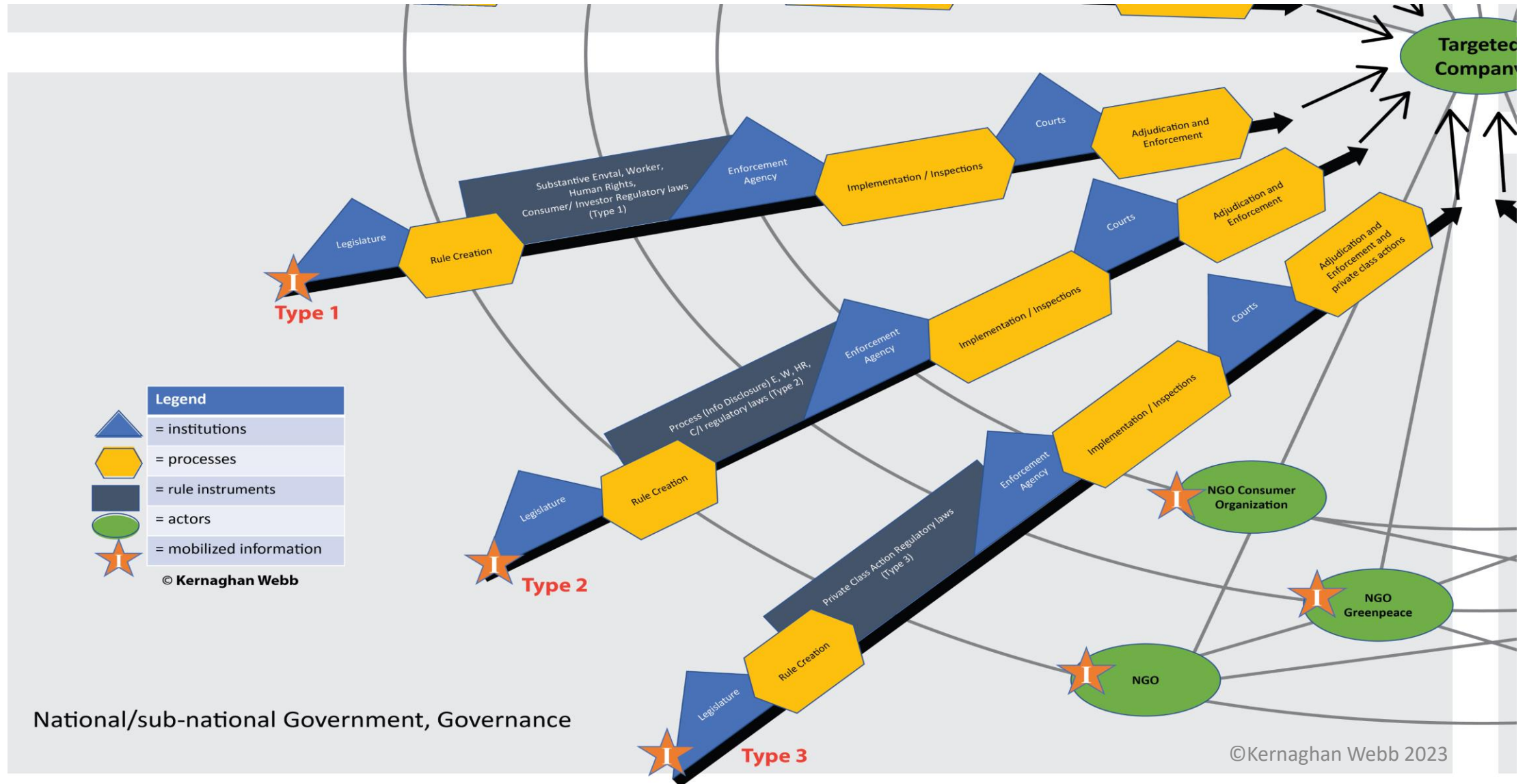
Some key points

- the law/standards due diligence connection (sponges, playgrounds, privacy)
 - regulatory law, private law, international law
- The power of disclosure/transparency (and connection to sovereignty)
- The diversity of drivers/actors/institutions/instruments pertaining to RBC due diligence and disclosure on RBC due diligence approaches and performance, that together form the regulatory eco-system applying to Canadian firms active abroad

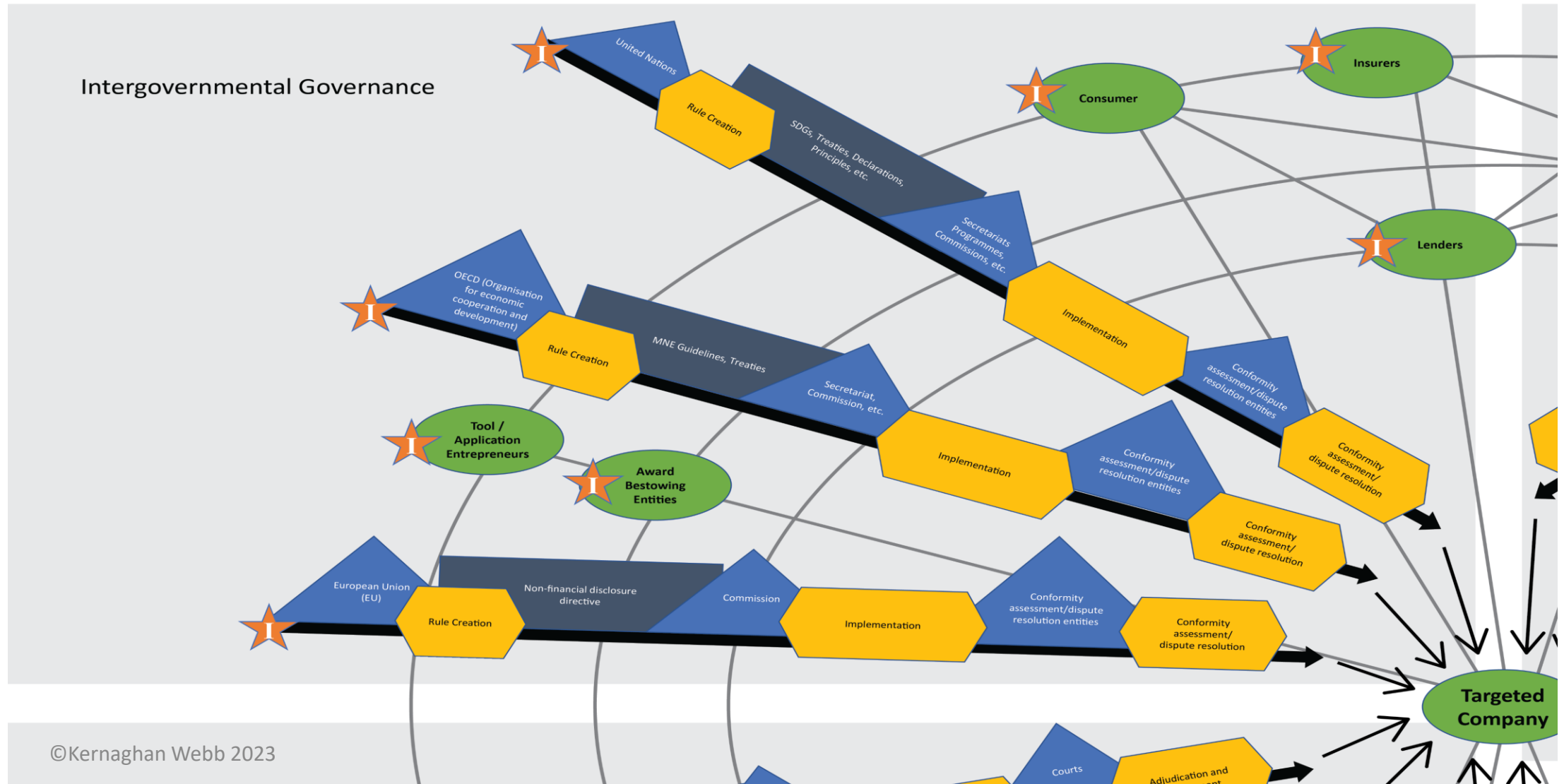
The fast-evolving, multi-jurisdictional, state and non-state Responsible Business Conduct regulatory ecosystem surrounding firms



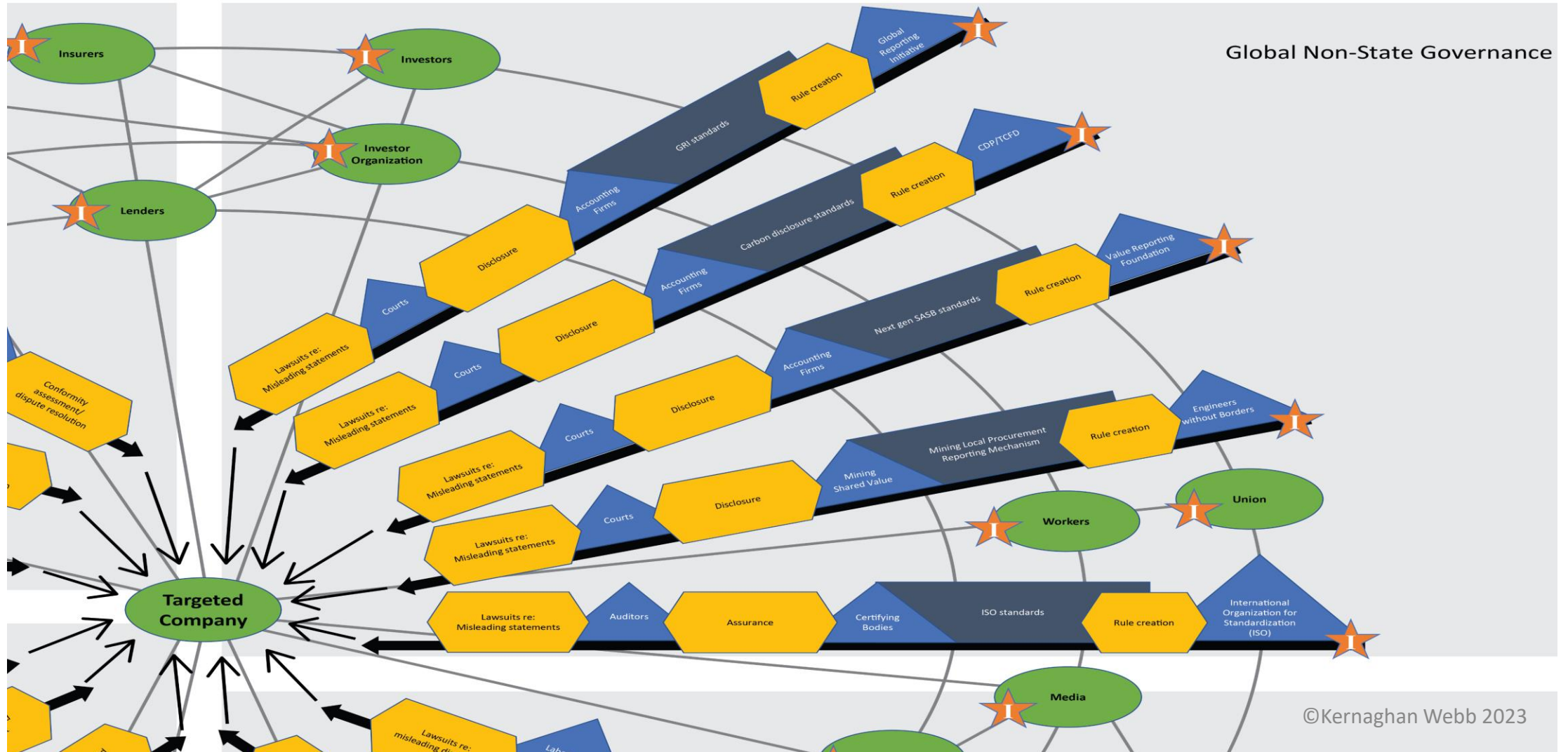
Canadian (or host) governmental quadrant



Inter-governmental quadrant



Global non-state quadrant



Canadian (or host) country non-state quadrant

