

Canada's forced labour and child labour reporting legislation: What you need to know



On May 3, 2023, Canada passed its first reporting legislation for modern slavery and child labour, the [Fighting Against Forced Labour and Child Labour in Supply Chains Act](#) (the Act). The Act forms part of an increasing response from the Government of Canada on business and human rights considerations, and in particular human rights in supply chains. We have previously discussed these measures [here](#), [here](#) and [here](#). In addition to compliance with new reporting requirements, companies with environmental, social and corporate governance (ESG) concerns will be keen to ensure that their internal supply chain policies and actions reflect best practices and align with leading ESG metrics.

The Act enters into force on January 1, 2024, with the first set of reports due on May 31, 2024. That said, in many cases, the new reporting obligations may require a change in company policies and potentially business operations. It is therefore best to start reviewing the new reporting requirements and your internal policies early in 2023 to ensure that any amendments to internal policies, procedures and business practices can be adopted and reflected in the report.

1. Why this legislation matters to you

As noted above, this legislation forms part of a series of measures that Canada has recently adopted relating to business and human rights. The Act creates a legal obligation to report on forced labour and child labour in supply chains. Prior to the Act reporting of this nature was voluntary. Hence, in addition to responding to ESG pressures, entities that meet the reporting thresholds now must also create and file a report as part of their regulatory obligations.

At the outset it is crucial to note the following key aspects of the Act for reporting entities to consider when developing their report and reviewing their internal policies and procedures to incorporate human rights and modern slavery into their operations.

- The reports are public. The reports must be prominently posted on a company's website. Further, they will be available in a government registry.
- For *Canada Business Corporations Act* entities or entities created under any other act of parliament, reports must be sent out to shareholders with other financial reporting documents.
- The reports must be approved by an entities' board and signed off by one or more directors or officers.

- There are penalties for non-compliance, including fines up to CA\$250,000. This includes false or misleading statements.
- Directors/officers are specifically liable under the Act, in addition to any other general director/officer liability.
- Notably, while a company may already report in jurisdictions other than Canada on modern slavery, the Act also includes reporting on child labour. – Canada is one of the first jurisdictions in the world to include reporting on child labour in supply chains. To the extent a reporting entity's existing internal policies do not include diligence and prohibitions relating to child labour, they should consider expanding the diligence efforts and policies to include it.

We describe these elements in further detail below.

2. What entities are required need to report

The Act defines entities as follows:

An entity is defined as a corporation or a trust, partnership or other unincorporated organization that

(a) is listed on a stock exchange in Canada;

(b) has a place of business in Canada, does business in Canada or has assets in Canada and that, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent financial years:

(i) it has at least CA\$20 million in assets,

(ii) it has generated at least CA\$40 million in revenue, and

(iii) it employs an average of at least 250 employees; or

(c) is prescribed by regulations, which have yet to be enacted (a **Reporting Entity**).

Note that the above criteria are not cumulative. To date, no regulations have been developed under the Act.

In addition to the above definition, the Act applies to any entities (a) producing, selling or distributing goods in Canada or elsewhere; (b) importing into Canada goods produced outside Canada; or (c) controlling an entity engaged in any activity described in (a) or (b) (Reporting Activities).

In brief, to a Reporting Entity you must meet the definition of entity and engage in one the Reporting Activities noted above. Notably, the reporting entity net is cast broadly to include entities that meet the definition of entity above, but are parent companies or other entities up the chain. Hence, a Canadian entity, that meets the definition of an entity, that controls a subsidiary engaged in reporting activity must also file a report, or a joint report with the subsidiary.

3. What does the report need to contain?

The reports must include the steps the entity has taken during its previous financial year to prevent and reduce the risk that forced labour or child labour is used at any step of the production of goods, in Canada or elsewhere, by the Reporting Entity or of the goods imported into Canada by the Reporting Entity (the Report).

In addition, the Report must include the following information of each entity subject to the Report:

1. Its structure, activities and supply chains;
2. Its policies and its due diligence processes in relation to forced labour and child labour;
3. The parts of its business and supply chains that carry a risk of forced labour or child labour being used and the steps it has taken to assess and manage that risk;
4. Any measures taken to remediate any forced labour or child labour;
5. Any measures taken to remediate the loss of income to the most vulnerable families that results from any measures taken to eliminate the use of forced labour or child labour in its activities and supply chains;
6. The training provided to employees on forced labour and child labour; and
7. How the entity assesses its effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chains.

Given the required contents of the report, the Act effectively assumes that Reporting Entities will have carried out a mapping exercise to identify human rights and forced labour risks in their supply chains and will have policies and due diligence processes in place to address forced and child labour, including remediation in an entity's supply chain.

4. Board approval, Director/Officer sign-off, public posting and shareholder availability

In addition to drafting the report, the reports must be approved by an entity's governing body, or in the case of a joint report, by the governing body of each entity included in the report, or the governing body that controls each entity included in the report. In most cases, this will be the board of directors.

Board approval must be accompanied by a statement in the report stating that it has been approved by the board and must include a signature of one or more members of the governing body that approved the report.

Reports must be available to the public, including by publishing it in a prominent place on an entity's website. The reports are also submitted to the Minister of Public Safety and Emergency Preparedness (the Minister) who will post all reports online in a public registry.

Finally, a Reporting Entity that is incorporated under the *Canada Business Corporations Act* or any other Act of Parliament must provide the Report as amended to each shareholder, along with its annual financial statements.

5. Offences and punishment

The Act also contemplates offences for compliance failures. To the extent the Minister believes that a report does not comply with the Act, the Minister may order an entity to take the necessary steps to comply with the Act.

Other offences include:

- An offence punishable on summary conviction and liable to a fine of not more than CA\$250,000 for failure to complete the report, post the report online or submit it to the Minister, or obstructing or hindering an investigation into the obligations under the Act.
- Knowingly making any false or misleading statement or knowingly providing false or misleading information to the Minister can be subject to an offence punishable by summary conviction and liable to a fine of not more than CA\$250,000.
- Directors, officers, agents and mandataries are also subject to specific liability under the Act. Any director, officer, agent, or mandatary that directed, authorized, assented to, acquiesced in or participated in an offence is a party to and guilty of an offence under the Act and is liable on conviction to the punishment, whether or not the person or entity that committed the offence has been prosecuted or convicted.

6. Concluding thoughts

As we noted, this reporting obligation forms part of a suite of measures that has recently been imposed by the Government of Canada on supply chains and human rights, which include measures relating to government contracting, trade prohibitions, sanctions and the Canadian Ombudsman for Responsible Enterprise and dispute resolution. In the most recent Canadian budget, the government noted that further legislation is currently being contemplated on human rights and supply chain matters, although it is currently not clear what exactly this would entail. In sum, in addition to ESG considerations on supply chains and human rights, legal obligations surrounding supply chain and human rights appear to be here to stay and will play an increasing role in compliance requirements for Canadian companies.

If you have any questions, please feel free to reach out to [Paul Lalonde](#), [Sean Stephenson](#) or [Daniela Acevedo](#) with any inquiries.