Modern slavery and supply chain transparency in Canada: How to report

December 06, 2023

This updated article was originally published in April 2023.

Canada's *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the Act) received Royal Assent in May 2023, after Bill S-211 garnered sufficient support to pass all readings at the House of Commons. From this point on, Canadian business standards on human rights risk management will now evolve to reflect the new priorities set by the Act, as it comes into force on Jan. 1, 2024.

Many of Canada's key trade partners have adopted legislation that take into account ethical standards derived from:

- the United Nations (UN)'s Guiding Principles on Business and Human Rights, which require businesses to make Human Rights Due Diligence (HRDD) monitoring part of their processes;
- the Organization for Economic Cooperation and Development (OECD)'s Due Diligence Guidance for Responsible Business Conduct; and
- the International Labour Organization (ILO)'s Tripartite Declaration on Multinational Enterprises.

In Canada, like other countries, reporting on forced and child labour risks is now mandatory under the Act.

Entities subject to the new legislation are expected to submit a first official report to the federal government no later than May 31, 2024.

Who must report on modern slavery risks

Aside from government institutions, the targeted entities under the Act are corporations, partnerships, trusts or unincorporated associations that:

- are Canada-based or active in Canada to produce, sell or distribute goods, regardless of the goods' destination;
- import goods into Canada; or
- control another entity involved with any of the above.

To qualify, the above entities must also either be listed on a Canadian stock exchange or meet two of the three following criteria:

- $20M in assets
- $40M in revenue
- employ at least 250 people

Extending well beyond their Canadian operations, these private entities will be required to report on their entire supply chain, inside or outside the country, in a sustained attempt at transparency.

Impact on small and medium enterprises (SMEs)

While Canadian businesses operating on a smaller scale than the entities targeted by the Act are not required to report, they may find themselves subject to similar requirements if they are a supplier of a reporting entity. Similarly, they can certainly draw inspiration from the Act's direction and position themselves early on towards meeting increasing expectations in the global fight against forced and child labour.

Voluntary initiatives that range beyond what may be required by regulation tend to be looked upon favourably in a context where environmental, social and governance (ESG) factors draw more and more attention in managing litigation and regulatory risk.

As they investigate and sanitize their own supply chain, smaller businesses may find themselves better equipped to meet the demands of entities that are subject to the Act, in a trickle-down effect. They may also secure funding more readily as they hit benchmark ESG targets, and establish an easier rapport with Export Development Canada.

How to report

The Act requires that a yearly report be transmitted to the minister of Public Safety and Emergency Preparedness (the Minister). It must also be made publicly available, including by publishing on the reporting entity's website. In producing their report, businesses are expected to document their achievements as they:

- Investigate their supply chain and conduct Human Rights Due Diligence to identify areas of forced and child labour risk;
- Implement policies, training, supplier onboarding protocols and contractual enforcement machinery as required; and
- Set up appropriate compliance, monitoring and remedial processes.

After itemizing the measures taken to prevent and reduce the risk of forced or child labour at "any step of the production of goods" within their supply chain, the report will then be submitted to the entity's board of directors or other governing body. The personal liability of directors and officers will be engaged in the event of a violation has occurred, as set out under the Act.

What must be reported: seven mandatory areas

The report must include information about seven mandatory areas:

- An entity's structure, activities and supply chains;
- Its policies and its due diligence processes in relation to forced and child labour;
- The parts of its business / supply chains that carry a risk of forced or child labour being used and the steps it has taken to assess and manage that risk;
- The measures it has taken to remediate any forced or child labour;
- The measures taken to remediate the loss of income to the most vulnerable affected families due to measures taken to eliminate the use of forced or child labour;
- Employee training on forced and child labour; and
- How the entity assesses its effectiveness in ensuring that forced and child labour are not being used in its business and supply chains.

Forced and child labour risks vary by context

Under the Act, a company may need to go down to the source of raw materials in some cases. Different types of exploitation exist in different contexts, and modern slavery risks vary according to region, industry and activity.

For certain key resources, the risks associated with forced or child labour are well-known. This will be the case for cotton, for instance, or gold. Agriculture also comes with a long list of problematic raw materials for any business operating in the production or distribution of food products, with coffee, cocoa and sugarcane among the many harvests that have historically raised international concern, depending on their country of origin.

In other cases, raw materials may be found exempt of exploitation, but subsequent manufacturing processes may introduce forced or child labour into the supply chain.

The U.S. Department of Labor publishes a handy list of products and materials that are linked to forced or child labour. Part of Canada's efforts against forced and child labour model themselves after customs provisions introduced by the Canada-United States-Mexico Agreement (CUSMA) in 2020, and this list from the U.S. Department of Labor possesses heft.

Getting it right the first time: start early, dive deep

Whether they are entities subject to the Act, or SMEs hoping to sway a variety of stakeholders with a cutting-edge ESG approach, Canadian businesses will need to carefully consider the background processes they will require in order to provide an answer in the seven areas identified in the Act.

Understand the fundamental nature of Human Rights Due Diligence and the applicable international standards. The UN Guiding Principles on Business and Human Rights are generally seen as the gold standard for HRDD. Embracing a more holistic approach, the European Union is currently integrating mandatory Human Rights *and Environmental* Due Diligence (mHREDD) in its legislation, which may well be the way of the future.

Start the process early. Mapping out your supply chain in light of forced labour risks and identifying adequate solutions will take time. Not only will an early start prove useful when the time comes to report, it's also a strategic pre-emptive move in case of customs seizures: when goods are seized, it may be too late to easily reconstruct the supply chain.

Remember that Human Rights Due Diligence is scalable. It will vary by the size of an organization, its industry and the geographical sectors involved. Companies will experience a different process according to the risks to which they are specifically exposed and the complexity of their respective supply chain. Not all reporting entities will be able to immediately implement a complete supply chain risk-management solution; the expectation will rather be that the most likely risks are identified and prioritized, and that the system is refined over time.

Adapt your contractual tools to favour transparency. Your company's contractual machinery may need to be updated to enable the necessary transparency down the supply chain. Among other things, your business agreements should identify what risks are concerned, how and when to report to you on them, appropriate monitoring and compliance processes, and what the parties agree to do in terms of preventing and correcting issues.

Consider supplier onboarding as an opportunity to impose standards and gather information. Once a first yearly report has been successfully submitted, looping in new suppliers on your ESG priorities and choosing them according to their own ESG track record will help smooth out the process in the future and keep risk at bay, including in terms of forced labour. In the human and labour rights sphere, one possible starting point is to present suppliers with a code of conduct adapted from the ILO's guidelines on combating forced labour or one of the many industry-specific guidelines that exist.

Make sure to integrate your sustainability, procurement and risk management processes. Sooner than one would expect, these processes will provide peace of mind if they are properly integrated to your operations. Set attainable targets, aim for consistency, train your workforce and your suppliers as well, and come back to these processes regularly. Where ESG factors are concerned, committing to this could place you far ahead of the competition.

Think about grievance and remediation processes ahead of time. Solutions can become problems of their own. Should a labour rights violation arise within your supply chain, terminating a relationship with a supplier could lead to another rights violation, for instance in terms of mass unemployment. Under the Act, companies are also expected to devise remedial or grievance processes for victims, should an exploitative situation come to light.

Sanctions for non-compliance

Failure to report or publish will constitute an offence under the Act, which could attract a fine of up to $250,000 and engage directors and officers' liability.

Non-compliance may also trigger the Minister's investigative powers, who could order "any measures necessary" to scrutinize a company's operations if a flag has been raised, or to require a company to bring its reporting into compliance with the Act.

Up until now, investigations of business and human rights issues in Canada have been subject to various quasi-judicial procedures. In particular, the Canadian Ombudsperson for Responsible Business (CORE) is responsible for international human rights investigations in the garment, mining and oil and gas sectors. A previous article explores the powers of the CORE in more depth. Another forum for conciliation and mediation of national or international grievances is Canada's national contact point under the *OECD Guidelines for Multinational Enterprises*. Providing the Minister with the recourse of ordering "any measures necessary" opens the door to further options.

It is worth noting that the *Customs Tariff* already banned the importation of goods produced with forced labour. The Act now takes this a step further by adding child labour to the list of prohibitions. Any company that imports goods or components into Canada must be acutely aware of the risks of seizure at the border, and the need for supply chain traceability.

Key takeaways

Canada's *Fighting Against Forced Labour and Child Labour in Supply Chains* Act, formerly known as Bill S-211, requires many Canadian businesses to begin reporting on forced and child labour risks across their operations and supply chains as of 2024. Aside from the reputational risks inherent in such reporting, the Act introduces a system of fines, ministerial powers to order "any measures necessary" to ensure compliance, and an enhanced customs ban on products tainted by forced or child labour.

In order to report, or potentially secure the release of goods seized at the border, businesses will need to conduct Human Rights Due Diligence to examine their operations and supply chains and institute appropriate compliance processes.

Contact us

BLG can guide Canadian businesses through a supply chain audit, review internal compliance policies and standard operating procedures, provide advice on supply chain ethics as well as how best to prepare for Canada's modern slavery legislation. Reach out to any of the key contacts below or any lawyer from our International Business & Human Rights group for assistance.

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