

Canada's New 'Modern Slavery Act' and What It Means for You

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The Modern Slavery Act

Consumers and investors alike have become increasingly concerned with ethical supply chains, particularly as the appeal and importance of ESG intensifies in many sectors. Internationally, the concern is growing that supply chains will engage in illegal substandard working conditions at some point.



And so, after more than four years, the federal government of Canada has enacted legislation to combat what they refer to as "modern slavery" in supply chains. Bill S-211, *An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff* (the "Act"), received Royal Assent on May 11, 2023, and is scheduled to be in force on January 1, 2024.

The purpose of the Act is to combat forced labour and child labour by imposing reporting obligations on Canadian government institutions as well as certain business entities engaged in importing products and supplies into Canada.

What does the Act do?

The Act has two primary functions.

First, the Act mandates certain "entities" and "government institutions" to submit annual reports to the Minister of Public Safety and Emergency Preparedness (the "Minister") by May 31st each year. These reports must detail the measures taken during the previous year to prevent and reduce the risk of forced labour or child labour in their supply chains.

Entities are any corporation, trust, partnership or other unincorporated organization involved in producing, selling or distributing goods in Canada or elsewhere or importing goods into Canada, or controlling entities engaged in these activities. Additionally, the entity must either be listed on a Canadian stock exchange or have a place of business, conduct business or possess assets in Canada, and meets at least 2 of the following 3 criteria:

- Assets of \$20 million or more
- Revenue of \$40 million or more
- 250 or more employees

In addition to submitting the report to the Minister, the entity must also make it publicly

available by publishing it prominently on their website.

Government institutions include any government institution producing, purchasing or distributing goods in Canada or elsewhere. The reporting obligations imposed on government institutions are virtually identical to those imposed on entities.

What does a report entail?

Reports must be addressed to the Minister on steps taken during the previous financial year to prevent and reduce the risk that forced labour or child labour is used.

- In the case of entities, reports must relate to all steps of the production of goods in Canada or elsewhere by the entity or of goods imported into Canada by the entity.
- In the case of government institutions, the report must relate to all steps of production of goods produced, purchased or distributed by the government institution.

Both entities and government institutions must include supplementary information in their reports, including:

- its structure, activities and supply chains;
- its policies and its due diligence processes in relation to forced labour and child labour;
- the parts of its activities 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;
- any measures taken to remediate any forced labour or child labour;
- any measures taken to remediate the loss of 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 or government institution assesses its effectiveness in ensuring that forced labour and child labour are not being used in its activities and supply chains.

The reports described above must be approved by an entity's governing body, such as a board of directors. Notably, both entities and government institutions must make their reports public, including by publishing them to their websites.

Federal corporations (i.e. incorporated under *The Canada Business Corporations Act*) will also be required to deliver their reports to each of their shareholders.

Administration and Enforcement

The Act grants significant powers of enforcement of entities to persons the Minister designates. Such designated persons may enter any place where they have reasonable grounds to believe a contravention of the Act has occurred as it relates to entities. As well, designated persons may examine anything in the place, including documents and computers; take photos; prohibit access to all or part of the place; and even remove anything from the place for the purpose of examination.

Every person or entity that fails to submit their annual report and publish it publicly, obstructs an investigation, or fails to comply with a corrective order is guilty of an offence and liable to a fine of up to \$250,000. As well, every person or entity that knowingly misleads or makes a false statement to a designated person or the Minister is guilty of an offence and liable to a fine of up to \$250,000.

Finally, if a person or entity commits an offence described above, any director, officer, agent or mandatory of the person or entity that directed, authorized, assented to, acquiesced in, or participated in its commission is a party to and guilty of the offence and liable on conviction to the punishments described above, whether or not the person or entity has been prosecuted or convicted.

Customs Tariff

The Final part of the Act amends the *Customs Tariff* by including child and forced labour in the prohibition against importing into Canada goods that are mined, manufactured or produced using forced labour, and by importing the Act's definitions of forced labour and child labour into the *Customs Tariff* prohibition.

What will be the impact of this Act?

Many entities and government institutions may already be engaged in due diligence and reporting exercises. However, for those entities and government institutions that have yet to consider the ethics of their supply chains, the implications of the Act may be significant and should start preparing a due diligence plan now in anticipation of the first May 31, 2024 reporting requirement.

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