

Complying with Canada's New Forced Labour and Child Labour Reporting Law

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Last May, the Canadian government enacted legislation aiming to assist in the removal of forced labour and child labour from Canadian supply chains. The *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the “**Act**”) took effect on January 1, 2024 and applies to organizations and government institutions that meet certain criteria.

Government institutions, bodies and offices that are subject to the *Federal Access to Information Act* and that produce, distribute or purchase goods, will be subject to the Act.

Likewise, certain entities that produce, distribute and/or sell goods in or outside Canada, or that otherwise import goods produced outside Canada (referred to as “**Triggering Activities**”) will be subject to the Act (referred to as “**Reporting Entities**”). More specifically, Reporting Entities include corporations, trusts, partnerships, and other unincorporated organizations that are either (i) listed on a stock exchange in Canada or (ii) undertake any Triggering Activity and meet the following conditions:

1. the organization has a place of business in Canada, does business in Canada or has assets in Canada (the Act does not provide any guidance in this regard and the criteria applied by the Canada Revenue Agency may therefore be useful in determining whether an organization has a presence in Canada for the purposes of the Act); and
2. the organization must meet two or more of the following conditions for at least one of its two most recent financial years:
 - a. the organization must have at least \$20M in assets
 - b. the organization must have generated at least \$40M in revenue, and/or
 - c. the organization must employ an average of at least 250 employees.

Consolidated financial statements are used to make the determinations in items 2 a. and 2 b. above.

Moreover, an entity that controls a Reporting Entity will also be considered to be a Reporting Entity for the purposes of the Act.

The Act introduces a reporting regime requiring a Reporting Entity to submit an annual report to the Minister of Public Safety outlining what steps it has taken over the course of the previous financial year to prevent and reduce the risk that the goods that it produces, distributes or sells, or goods produced outside of Canada that it imports, involve the use of forced labour or child labour. The first such report is due on or before **May 31, 2024**.

A Reporting Entity's annual report will need to include the following information:

- 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 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;
- 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 its employees on forced labour and child labour; and
- how it assesses its effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chains.

Reporting Entities that are related may provide a joint report. Prior to being submitted, a report must be approved by the Board of Directors (or equivalent) of each Reporting Entity covered by such report. Directors are required to personally attest as to the accuracy and completeness of the annual report being submitted. Reporting Entities and their respective directors and officers are accountable for the accuracy and completeness of the information included in their annual reports.

Providing inaccurate or misleading information is an offence under the Act and can carry fines of up to \$250,000. Directors and officers who directed, authorized, assented to, acquiesced in or participated in the commission of an offence under the Act may be charged regardless of whether or not the Reporting Entity has been prosecuted or convicted. Care should therefore be applied when preparing annual reports and in promptly revising previously filed annual reports when possible inaccuracies or misleading statements come to light.

Once filed, an annual report must be made available to the public. This includes, at a minimum, publishing such report in a prominent place on the Reporting Entity's website. The Minister of Public Safety will also launch and maintain a registry containing all reports and revised reports that have been filed by Reporting Entities pursuant to the Act which can be freely consulted by the public at large.

The Act does not go any further than creating the aforementioned disclosure obligations. It does not set any minimum standards or requirements in terms of due diligence, contracting or monitoring one's supply chain to eliminate, reduce or address forced labour and child labour risks. However, disclosure of any known or suspected shortcomings in terms of the foregoing will be required in terms of any Reporting Entity.

Given the public nature of reports filed by Reporting Entities, the indirect (and likely intended) consequence of the Act will be to create pressure for Reporting Entities to implement and maintain adequate internal due diligence processes and controls and periodically assess these to confirm that they remain adequate.

Reporting Entities and their respective efforts to prevent or remove forced labour and child labour from its supply chain will ultimately be compared with those of its peers. Media organizations and public interest groups will have valuable information at their disposal and will likely make productive use of the foregoing.

Reporting Entities would be well advised to take a close look at their activities and supply chains to fully understand these as the foregoing will be the bedrock in terms of the preparation of their annual reports. Likewise, Reporting Entities will need to carefully review their current policies, processes and controls well in advance of May 31, 2024 to give themselves adequate time to allow for a proper assessment in terms of the adequacy of these and consider whether remediation of any areas that are not at par with industry best practices is both desirable and feasible prior to the filing deadline.

Blaney McMurtry LLP can assist Reporting Entities to ensure compliance with the Act as well as developing and implementing applicable policies and procedures in terms of their supply chains.

The information contained in this article is intended to provide information and comment, in a general fashion, about recent developments in the law and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.