

UPDATE ON 2024 MANDATORY SUPPLY CHAIN REPORTING OBLIGATION: NEW GUIDANCE AND MANDATORY QUESTIONNAIRE

Posted on January 16, 2024

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Canadian and international businesses must file their first annual report on forced and child labour in supply chains by May 31, 2024. We recommend that those businesses with a reporting obligation take immediate action to prepare their reports and consult with legal counsel at the earliest opportunity to ensure they are fully compliant with the new law.

The *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (“**the Act**”), previously Bill S-211, came into force on January 1, 2024. Our team provided an [overview](#) of the Act’s requirements last May, and continues to support a large number of Canadian and international businesses in preparing their reports, which are now due in less than 5 months.^[1]

This bulletin covers new guidance published by Public Safety Canada and discusses the new mandatory questionnaire that must be submitted along with a company’s annual report.

Public Safety Canada’s Guidance

Public Safety Canada has now released its long-anticipated guidance (“**the Guidance**”) on the Act’s reporting requirements.^[2] While the Guidance offers significant clarity to aid businesses in complying with the Act, certain aspects still require careful attention.

The Guidance reiterates that businesses must file reports if they meet the Act’s definitions of “entity” and “reporting entity”. To be an “entity,” organizations must either be listed on a Canadian stock exchange, or have a place of business in Canada, do business in Canada, or have assets in Canada and meet the Act’s size-related thresholds relating to assets, revenue, and employees.^[3]

International companies with even a very minor nexus to Canada may thus have an obligation to file a report. For example, the Guidance clarifies that “doing business in Canada does not require having a place of business in Canada.”^[4] “**Doing business**” in Canada includes, among other factors, considerations of where goods are produced, sold, distributed, and delivered, where employees are located, and where assets are located.

Additionally, size-related thresholds, constituting total assets, revenues, and employees, should be calculated considering the entity's consolidated financial statements and converted into Canadian dollars, and include size-related thresholds for subsidiaries.

A business may meet the Act's "entity" definition but would not be required to file a report if it does not satisfy the "reporting entity" definition. Under the Act, only entities that either: a) produce, sell, or distribute goods in Canada or elsewhere; b) import goods produced outside of Canada into Canada; or c) control an entity engaged in activities listed under a) or b) must submit a report.^[5] The Guidance explains that under the Act, "producing", "selling", "distributing", and "importing" goods is not intended to capture services that solely support the production, sale, distribution or importation of goods. These include, for example, marketing, administrative services, financial services and software services.^[6]

The Guidance helpfully provides an exclusion for "very minor dealings" under the meaning of producing, selling, distributing, and importing goods. However, "very minor" is not defined within the Guidance or the Act. It is therefore unclear whether it should be interpreted in the absolute, or whether very minor dealings are relative to the reporting entity's size. Importantly, the very minor dealings exception applies only to *reporting* entities' production, sale, distribution, and importation – it does not apply when establishing whether an entity has a place of business, does business, or has assets in Canada. Without further guidance, practically, this means that even if a business does 1% of its business in Canada, it will be caught by the Act's reporting requirements.

Lastly, the Guidance provides insight into the substantive requirements of the reports. For example, when reporting on an entity's **structure**, the Guidance suggests that entities may, among other factors, provide information on their: legal and organizational structure, organizational mandate, total number of employees, partner organizations or groups, and control of other entities. When reporting on an entity's **activities**, the Guidance suggests including details on production, manufacturing, growing, extracting, processing, sale or distribution of goods, the type and volume of goods imported into Canada, and where the entity is operating. Lastly, reporting entities may provide additional details on **training**, including whether it is mandatory, organization-wide, and its content and development process.

Public Safety Canada's mandatory questionnaire

In addition to filing its approved reports, reporting entities must now also complete Public Safety Canada's online mandatory forced labour questionnaire.^[7] The Guidance explains that businesses may use the questionnaire as a report template and to collect information required under the Act. The formal report may then be used to provide supplementary information and content, at the businesses' discretion.

Since the questionnaire must be completed prior to May 31, businesses should begin compiling the required

data as soon as possible. Though the questionnaire is mandatory, the responses are not public and do not have to be published to the reporting entity's website, unlike the report itself.

Conclusion for businesses

The Guidance reiterates that reporting entities should use discretion in determining how detailed their reports will be.

Notably, the Guidance outlines 5 steps that must be taken *prior* to May 31:

1. Prepare a report in compliance with the Act
2. Have the report approved by the appropriate governing body with a signed attestation^[8] included in the report's final version
3. Complete the mandatory questionnaire addressing each of the Act's requirements
4. Upload the attested report with the questionnaire
5. Publish the report in "a prominent place" on your company website^[9]

Businesses must comply with reporting requirements under the Act. Public Safety Canada's guidance will be an important starting point, though businesses should be aware of provisions of the Act that continue to lack clarity, like the meaning of "very minor" as discussed above. It remains to be seen whether Public Safety Canada will release updated guidance addressing areas that would benefit from additional clarity. The McMillan team remains available to assist.

[1] McMillan's team has written extensively on Bill S-211's developments. For more information, see: [Canadian Businesses Should Prepare for New Mandatory Reporting on Supply Chains and Forced Labour](#); [Combatting Forced Labour in Supply Chains from a Canadian Customs Perspective](#)

[2] Public Safety Canada, Forced Labour in Canadian Supply Chains – [Prepare a Report – Entities](#)

[3] Fighting Against Forced Labour and Child Labour in Supply Chains Act, s 2.

[4] Public Safety Canada, Forced Labour in Canadian Supply Chains – [Prepare a Report – Entities](#)

[5] Fighting Against Forced Labour and Child Labour in Supply Chains Act, s 9.

[6] Public Safety Canada, Forced Labour in Canadian Supply Chains – [Process overview](#)

[7] Public Safety Canada, Forced Labour in Canadian Supply Chains – [Questionnaire](#)

[8] For sample attestation language referenced in the Guidance, see [here](#)

[9] Public Safety Canada, Forced Labour in Canadian Supply Chains – [Process overview](#)

by [William Pellerin](#), [Tayler Farrell](#), and [Brigid Martin](#) (Articling Student)

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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