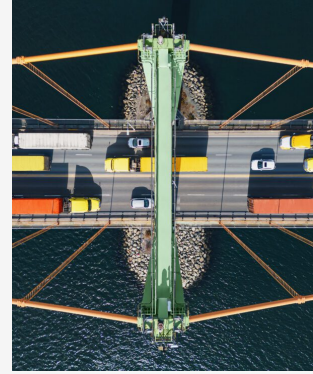


# Public Safety releases guidance and hosts technical briefing on supply chains diligence legislation

JANUARY 15, 2024 8 MIN READ



## Related Expertise

- [International Trade](#)

Authors: [John M. Valley](#), [Matthew Kronby](#), [Jesse Goldman](#), [Alan Kenigsberg](#), [Chelsea Rubin](#), [Jacob Mantle](#)

Canada's *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the Act) came into force on January 1, 2024. As described in our previous [blog post](#) and our [guide for businesses](#), the Act introduces annual reporting obligations, including on private entities that meet certain size thresholds and engage in (or control other entities engaged in) the production, sale or distribution of goods or the importation of goods into Canada. The first annual reports are due by May 31, 2024.

Since the Act was introduced in mid-2023, businesses have sought clarity on a range of topics, including whether they are subject to the reporting obligations, the required structure and contents of the reporting, and mechanisms for filing the required reports. On December 20, 2023, the responsible department, Public Safety Canada (Public Safety), published guidance on the application of the Act and the required reports on its [website](#) (the guidance). Notably, the guidance states that, in addition to filing a report, reporting entities must also complete an online questionnaire (the questionnaire). On January 2, 2024, Public Safety published the full [list of questions](#) comprising the questionnaire, and on January 11, 2024, Public Safety hosted a "technical briefing" on the guidance and the questionnaire.

Below is a summary of the guidance, the questionnaire and what entities should consider in preparing their reports.

## Determining your reporting obligations

As explained in our "[how-to guide](#)" for [businesses](#), businesses have a reporting obligation where they are "entities" engaging in "reporting activities". The guidance provides insight into each of these terms as they are used or defined in the Act.

The Act defines an "entity" as an organization listed on a Canadian stock exchange, or an organization with a place of business in Canada, doing business in Canada or with assets in Canada, that meets at least two of the following three conditions for one of its two most recent financial years: (1) \$20 million or more in assets, (2) \$40 million or more in revenue or (3) an average of at least 250 employees. The guidance provides additional information on the interpretation of these thresholds. Notably:

- The size-related thresholds should be calculated based on consolidated financial statements (converted into CAD). However, the reporting entity's revenue, assets and employees should not include the revenue, assets and employees of any entity that owns or controls it (i.e., its parent).
- The size-related thresholds are not restricted to Canada; they refer to global assets, revenues and employees of an entity.
- Assets are to be calculated on a gross (not net) basis and may include intangibles (e.g., goodwill).
- "Employees" has the same meaning as in Canadian common law and does not include independent contractors.

The guidance acknowledges that the Act does not define what it means to have a place of business in Canada, do business in Canada or have assets in Canada. It does, however, provide some indicia that may be considered in assessing whether these requirements have been satisfied, but suggests that businesses refer to the criteria applied by the Canada Revenue Agency and interpret these terms in their "ordinary sense". The guidance does specifically note that doing business in Canada does not require having a place of business in Canada.

An "entity" has a reporting obligation under the Act where it engages in any of the following activities:

- producing, selling or distributing goods in Canada or elsewhere
- importing into Canada goods produced outside of Canada
- controlling another "entity" engaged in such production, sale, distribution or importation

The guidance provides some insight into the intended interpretation of these activities.

- The terms "goods", "produce", "sell" and "distribute" are intended to be interpreted in the ordinary sense of each word, with "goods" referring to "goods that are the subject of trade and commerce". On the margins, this is likely to lead to inconsistent conclusions by businesses as to whether they must report.
- "Sell", "distribute" and "produce" are not intended to capture services (e.g., marketing, software services) that solely support these activities.
- An entity is considered to be importing goods into Canada if the entity is responsible for accounting for those goods per the *Customs Act* (i.e., acts as the importer of record and is responsible for presenting accounting documents to CBSA in connection with the import).
- While there is no prescribed *de minimis* threshold in the Act, the terms as used in the Act should be understood as excluding "very minor dealings" (a phrase not defined in the guidance).
- The Act provides that a joint report may be submitted by an entity with respect to any entities it controls. The guidance clarifies that "control" includes both direct and indirect control and extends down the organizational chain. Whether an entity controls another entity may be determined in accordance with an applicable accounting standard. Control should be considered in substance over form and may include situations of joint control.

While the guidance provides some additional information, a number of questions remain. Businesses should carefully consider whether they are caught and should consider seeking input from legal counsel or by contacting Public Safety at the email address provided in the

guidance.

## Preparing and filing a report

The guidance provides details on how entities, in completing their report, may respond to each of the Act's seven prescribed categories of information. The guidance also sets out technical specifications for reports to "fully comply with the Act", including a sample form of attestation that entities can use for the report, as well as page limits and size requirements for the reports. However, in a "technical briefing" held on January 11, Public Safety officials indicated that these specifications are not, in fact, mandatory. This clarification is useful since the Act does provide that the Minister has the authority to specify, in writing, the form and manner in which a report is to be provided. In particular, the form of attestation included in the guidance extends well beyond what is required by the Act itself. Businesses should consider carefully whether it is appropriate for use in their circumstances.

The guidance expresses that the Act does not require entities to disclose commercially sensitive information that would expose them to legal risk or compromise the privacy of any persons. Further, entities are not required to report on specific cases or allegations of forced labour or child labour.

During the January 11 "technical briefing", Public Safety officials also advised that while information in the reports will be subject to verification and reporting entities do have a clear legal obligation to file compliant reports by May 31 of each year, in the short- and medium-term Public Safety will be focused on compliance promotion, not enforcement.

## The questionnaire

The guidance introduces the concept of a questionnaire, which is not contemplated by the Act itself. However, completion of certain of the questions is required in order to submit the report using the online portal, effectively making completion of the questionnaire necessary to ensure full compliance. The questionnaire includes both mandatory and optional questions, which are answered in a drop-down menu. The full list of questions can be reviewed on the Public Safety website.

While responses to certain of the questions in the questionnaire can likely be lifted from, or based substantially on, sections of the business's report, other questions extend beyond the specific parameters of the report. Businesses should allow sufficient time to respond to these questions.

The questionnaire covers (and goes beyond) the prescribed categories of information that the Act requires reporting entities address in their reports. Therefore, while it may ask in certain instances for more than the Act strictly requires, completing at least the mandatory portions of the questionnaire and incorporating the answers into a report in the prescribed format will provide entities with comfort that they have met the core reporting obligations in the Act.

## Key takeaways

As businesses continue the process of considering their initial reports under the Act, the following steps may be a helpful starting point:

- Determine whether your business and/or any other entities within your organization's

structure (e.g., the business's direct parent) are "entities" under the Act. Following this determination, consider whether each of these entities engage in "reporting activities". For more on these topics see our [earlier blog post](#).

- Consider whether your business has reporting obligations in any other jurisdiction (e.g., Australia, the United Kingdom) and, if so, review the reports filed in these jurisdictions and consider whether the applicable Canadian requirements can be incorporated into the existing reporting structure.
- Review the questionnaire in detail (including both the mandatory and the optional questions) and consider the extent to which this may inform the structure or content of the report.
- Consider who from your business may need to be engaged in order to respond to the questionnaire (legal teams, procurement, operations, public relations, etc.).
- Take stock. Ensure that you are familiar with your business's existing policies and procedures (e.g., Codes of Conduct, standard form supplier agreements, policies relating to forced/child labour, etc.). Consider whether these extend all the way down your supply chains, to include indirect suppliers, and whether suppliers/vendors are required to comply with any internal policies. Also consider the extent to which these policies apply to joint ventures or other entities with which your business is engaged.
- If, after taking stock, you identify gaps and opportunities for improvement, consider whether there are concrete steps that can be taken before preparing your report. For example: can you run training sessions for teams that may be engaged in compliance matters (e.g., procurement, legal)? Can new policies be introduced? Can language be added to agreements with suppliers to ensure that indirect suppliers do not use forced or child labour in their supply chains? While the Act does not impose substantive standards of conduct or require remedial measures by reporting entities, the reports will be public documents and businesses may want to consider opportunities to strengthen their practices and internal controls prior to submitting them.

Osler's ESG and International Trade teams are actively advising clients representing various industries on compliance with the Act. If you require any assistance or have any questions regarding the Act, please contact a member of our [team](#).