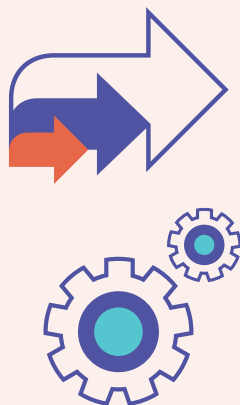


Fighting Against Forced Labour and Child Labour in Supply Chains Act

Guidance Document

March 2024

Context



The *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (“the Act”) came into force on January 1, 2024, imposing annual reporting obligations on many Canadian entities, potentially including some Ontario hospitals, in an attempt to minimize the risk of forced labour and child labour in supply chains.

The Ontario Hospital Association (OHA), in collaboration with Borden Ladner Gervais (BLG) has developed this Guidance Document to further assist hospitals in understanding their potential obligations under the Act.¹

For more information on the Act, please refer to the following resources:

- The OHA’s Backgrounder on the Act, available [here](#).
- Public Safety Canada’s Guidance on Forced Labour in Canadian Supply Chains, available [here](#).
- Public Safety Canada’s Questionnaire, available [here](#).

Purpose

This resource provides guidance on the Act, which addresses the risk of forced labour and child labour in supply chains. To foster a better understanding of whether organizations are subject to and compliant with the Act, the Guidance Document covers:

- I. The process for determining whether an entity is subject to the Act;
- II. An entity’s reporting requirements under the Act;
- III. A Checklist for entities subject to the Act; and
- IV. Requirements around Board attestation of reports.

¹ This document does not provide an in-depth analysis of applicable law, nor is it comprehensive of all legal requirements to which hospitals are subject. It is intended to provide an overview for hospitals to assist in deciding when they need to seek advice or additional information. Hospitals should not rely solely on the summary information contained in this document in deciding whether to take or refrain from taking action. The material in this document is for general information only and may need to be adapted by hospitals to accommodate their unique circumstances. This document reflects the interpretations and recommendations regarded as valid at the time of publication based on available information. It is not intended as, nor should it be construed as, legal or professional advice or opinion. Hospitals and individuals concerned about the applicability of the materials are advised to seek legal or professional counsel.

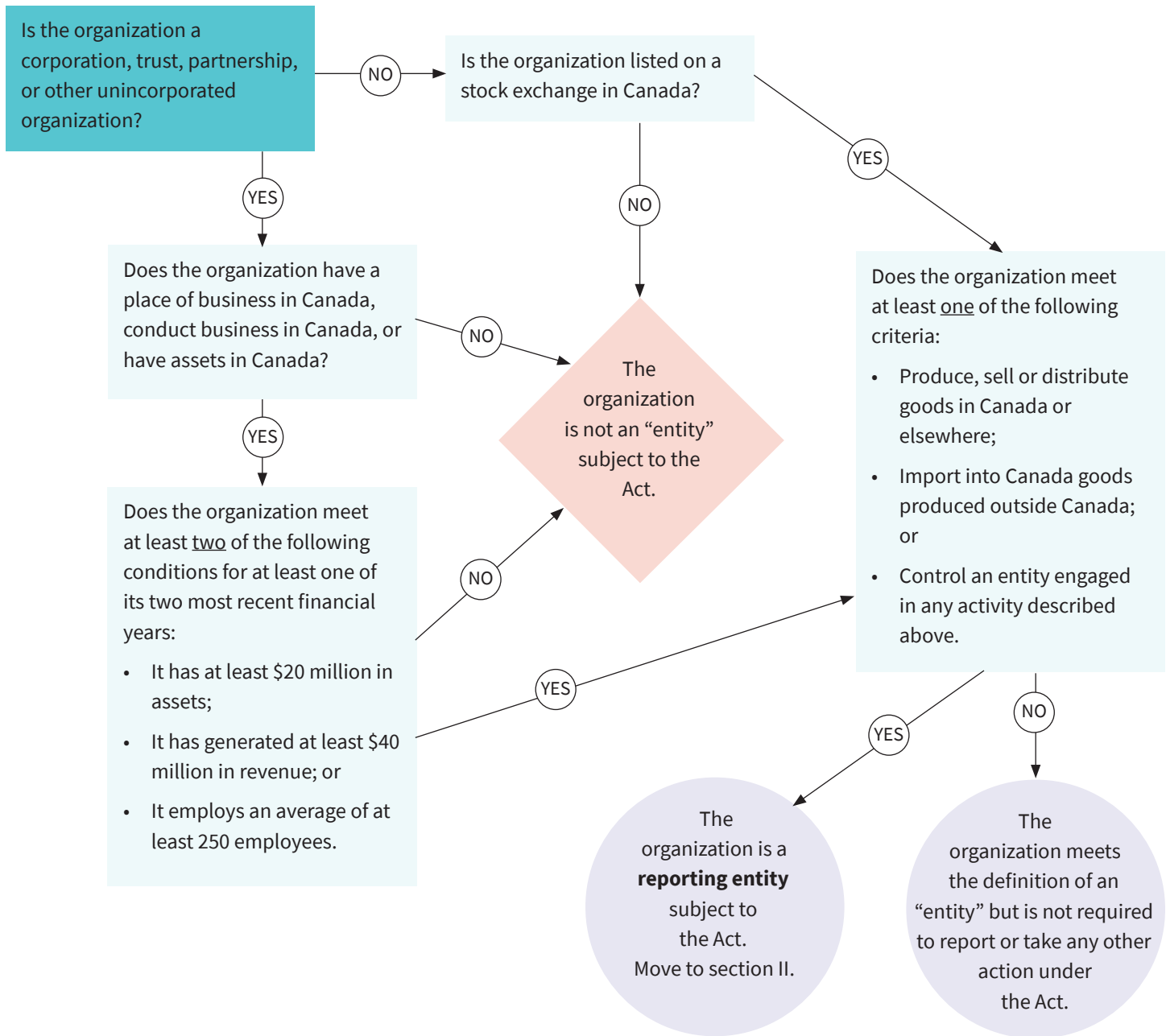
I. Entities Subject to the Act

Under the legislation, certain “entities” must submit an annual report to the Minister of Public Safety by May 31 of each year. Further information about the requirements of the report is outlined in section II below.

To be required to submit a report, an organization must meet the definition of **entity** under section 2 of the Act and meet the

criteria for being a **reporting entity**, as per section 9.² In other words, an organization may be an “entity” under the Act, but not required to report.

To determine whether an “entity” is subject to reporting obligations under the Act, the following flowchart may be informative:



² The Act also imposes reporting obligations on federal “government institutions,” however since a provincial organization such as a hospital does not fall within the Act’s definition of “government institutions”, these are not considered further in this Guidance Document.

For assistance in evaluating any of these questions please refer to Public Safety Canada's Guidance on the application of the Act available [here](#).

Note: An entity may choose to submit a joint report covering its own actions and those of any entities it controls (i.e., its subsidiaries), or that covers multiple entities belonging to the same corporate group. Joint reports must clearly identify the legal name of each entity covered by the report.

Joint reporting considerations only apply where different parts of an organization have separate legal personality (such as separate corporations for different sites, for example) and independently meet the criteria to be reporting entities.

II. Reporting Requirements Under the Act

Once an organization has been identified as **a reporting entity** under the Act, the entity must ensure that key annual reporting obligations have been met.

Reporting organizations must submit an annual report by May 31 of each calendar year.

The annual report will cover an entity's previous financial year and must be approved by the entity's Board of Directors.

The obligations of reporting entities are further outlined below.

A. Content of the Annual Report

The Annual Report, as mandated by the Act, should include both identifying information and information to be in compliance with section 11 of the Act.

Identifying Information includes:

- Legal name of the reporting entity;
- Financial reporting year;
- Indication if the report is revised;
- Business number(s), if applicable;
- Indication of a joint report;

- Reporting obligations under in other jurisdictions;
- Entity categorization according to the Act;
- Sector/Industry; and
- Location.

The content of the Annual Report, as mandated by the Act, requires entities to include a description of steps taken to prevent and reduce risks of forced and child labour in their supply chain; as well as supplementary detailed information on various aspects of their operations and practices related to forced and child labour.

Supplementary information is mandatory and must cover all of the following:

- The entity's structure, activities and supply chain;
- Policies and due diligence processes;
- Identification of any parts of the entity's operations or supply chain that carry risks of forced labour and child labour, and management of that risk;
- Remediation measures (including remediation for potential loss of income for vulnerable families);
- Training provided to employees on forced labour and child labour; and
- How the entity assesses its effectiveness in ensuring that forced labour and child labour are not being used in its operations and supply chains.

Entities should not disclose any commercially sensitive information that would expose them to legal risk or compromise any person's privacy. Nor are they required to report on specific cases or allegations of forced or child labour. Any description of identified instances and remediation need not reference specific instances, persons or groups.

It is important to note, however, that the Act does not require entities to meet a prescribed level of due diligence with respect to forced labour and child labour, but merely to state what they are (or are not) doing. The reporting obligation is

limited to transparency and is intended to indirectly encourage organizations to improve their due diligence around forced and child labour through the risk of reputational fallout.

For further information on these requirements, please refer to Public Safety Canada's Guidance, available [here](#).

Online Questionnaire

The Annual Report includes the completion of the online questionnaire. The online questionnaire includes both mandatory and optional questions. Mandatory questions gather essential information such as the entity's financial year and sector. Optional open-ended questions, with a 1500-character limit, allow entities to expand on their mandatory responses and provide further details. While optional, the Government has indicated that these open-ended questions are crucial for improving understanding and management of forced and child labour risks, and they enable entities to demonstrate transparency and responsible practices.

Entities can use the same structure and information from the questionnaire to prepare their report. The complete list of questions from the online questionnaire can be found [here](#).

Additional Commentary

Public Safety Canada has also provided the following [additional commentary](#) that may be informative for entities completing the report:

"The Government of Canada recognizes that entities may be taking a range of actions related to human rights due diligence, environmental, social and governance (ESG) initiatives and other aspects of responsible business conduct (RBC) that are not specifically or exclusively focused on forced labour or child labour. Entities can include a description of these actions as they relate to purposes of the Act in the space provided for additional information. Entities can also connect the description of their actions in the present reporting year to foundational work undertaken in previous years."

"The report will be a public-facing document, and entities are encouraged to use simple, clear language in their responses and to explain unfamiliar terms in order to make their report accessible."

"Entities are expected to provide honest responses which describe the concrete actions that they have taken to address risks of forced labour and child labour, rather than purely aspirational statements. The report should focus on actions taken during the previous financial reporting year, with the recognition that some actions may span multiple years or lack a concrete start and end point. If entities have an action plan in place that includes goals and steps for the future, they are encouraged to mention it in their report, but the report itself is not intended to serve as a plan or mission statement."

B. Format of the report

The online questionnaire can be used as a template to develop and format the Annual Report.

The Annual Report must be submitted in at least one of the two Canadian official languages, with a recommended page limit of 10 pages for each version. The English and French versions of the report can be uploaded as separate PDF files. However, the Government recommends that reports be submitted in both English and French for accessibility purposes. While the Act does not mandate bilingual or translated reports, organizations should assess whether they are subject to the *Official Languages Act* or other bilingualism requirements that would require them to provide a report in both official languages or to provide a translation on demand.

Additional Commentary

Public Safety Canada has also provided the following [additional commentary](#) that may be informative for entities on the format of the report:

"There is no prescribed level of detail required for the responses. Entities should use discretion in determining the appropriate level of detail proportionate to their size and risk profile, respecting the specified size requirements for the report."

C. Public Accessibility

The report must be publicly accessible and must be published “in a prominent place on [the entity’s] website,” as per section 13(1). A copy of the report uploaded through the questionnaire will also be made publicly available by Public Safety Canada in a searchable online [catalogue](#).

D. Coverage Period

All reports must reference the activities undertaken during the entity’s previous financial year. A report should cover the activities of the financial year that ends no later than the reporting deadline. For example, if an entity’s financial year runs from April 1 – March 31, then a report due on May 31, 2024 would cover the activities from April 1, 2023 to March 31, 2024.

E. Board Attestation

The report requires formal approval from the relevant governing body or bodies with legal authority to bind the entity or entities involved. A signed attestation, adhering to specific criteria, must be included in the final PDF version of the report. For a single entity report, approval from its governing body is necessary, while a joint report requires approval from each entity’s governing body or the controlling entity’s governing body.

For further details on the attestation format and requirements, see Section IV below.



III. Checklist for Entities Subject to the Act

This checklist serves as an initial tool to assist reporting entities in understanding their reporting obligations under the Act. This checklist is for guidance only and does not serve as a comprehensive review of all required obligations.

Checklist for Reporting Obligations under the Act	
✓	Compliance Item
	Prevention Efforts: Document the steps taken during its previous financial year to prevent and reduce the risk of forced labour or child labour at any stage of the production of goods, and in the goods imported into Canada by the entity.
	Organizational Overview: Prepare a comprehensive overview of the entity’s structure, activities, and supply chain.
	Policies and Due Diligence: Outline the entity’s policies and due diligence processes in relation to forced labour and child labour.
	Risk Assessment: Identify 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.
	Remediation Action: Describe any measures taken to remediate any forced labour or child labour.
	Mitigating Income Loss: Detail 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.
	Employee Training: Provide information about the training given to employees on forced and child labour
	Effectiveness Evaluation: Explain the methods used to assess its effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chains.
	Documentation: Ensure proper records are kept documenting the steps taken above, should the Government request such documentation under section 15 or in case of a prosecution under sections 19 or 20.

IV. Board Attestation Requirements & Liability

Approval and Attestation

Once completed, the appropriate governing body or bodies holding the legal authority to bind the entity must approve the report. The report, whether for a single entity or a joint report involving multiple entities, must be approved accordingly: in the former case by the governing body of the single entity; and in the latter by the governing bodies of all included entities or by the governing body of the controlling entity, if applicable.

The approved report must receive attestation that includes:

1. A statement that sets out whether it was approved by the appropriate governing body or bodies; and
2. The signature of one or more members of the governing body of each entity that approved the report, accompanied by the name and title of the approving member, the date of signature and a statement confirming that the approving member has the legal authority to bind the entity.

The attestation in the PDF report must follow a specific format, set out in the guidance as follows:

In accordance with the requirements of the Act, and in particular section 11 thereof, I attest that I have reviewed the information contained in the report for the entity or entities listed above. Based on my knowledge, and having exercised reasonable diligence, I attest that the information in the report is true, accurate and complete in all material respects for the purposes of the Act, for the reporting year listed above.

- Full name
- Title
- Date
- Signature, accompanied by the statement “I have the authority to bind ‘Name of Entity.’”

Board Liability

The Act provides for penalties of up to \$250,000 for non-compliance with requirements under the Act, including for:

- Failing to submit or properly publish a report;
- Failing to include information prescribed by the Act in a report; and
- Making a “false or misleading statement” in a report or in the course of an investigation to verify compliance.

The Act also provides for separate liability of directors and officers of the entity (with individual fines up to \$250,000), in instances where those individuals directed, authorized, assented to, acquiesced, or participated in the commission of an offence under the Act.

Conclusion

The new legislation came into force on January 1, 2024, and entities who meet the criteria set out above will be required to provide the first annual report to the Minister of Public Safety and Emergency Preparedness **on or before May 31, 2024.**

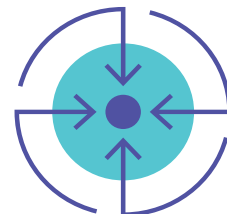
For more information, please contact:

Ashley MacDougall, Legal and Policy Advisor, OHA
amacdougall@oha.com

Meghana Kuriya, Student-at-Law, OHA
Mkuriya@oha.com

Benedict Wray, Senior Associate, BLG
bwray@oha.com

Laura Levine, Partner, BLG
Llevine@blg.com



200 Front Street West, Suite 2800
Toronto, Ontario M5V 3L1
www.oha.com