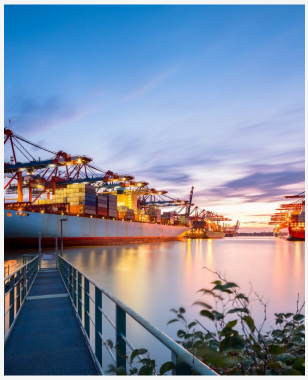
OSLER

Updated guidance and lessons learned after second year under Canada’s Supply Chains Act

JANUARY 20, 2025 9 MIN READ



Related Expertise

- Competition/Antitrust
- International Trade and Investment

Authors: John M. Valley, Matthew Kronby, Alan Kenigsberg, Chelsea Rubin, Valeska Rebello

2025 marks the second year of reporting under Canada’s *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the Supply Chains Act or the Act), also referred to as the Modern Slavery Act. In this Update, we take stock of lessons learned from the previous year, and outline what businesses can expect in the coming reporting cycle.

On January 15, 2025, Public Safety Canada (Public Safety) held an information session to discuss updates to its guidance for entities and government institutions on reporting obligations under the Act (the Guidance). The updates to the Guidance were introduced in November 2024 and appear to reflect feedback provided by entities and others involved in preparing reports under the *Supply Chains Act*. While the updated Guidance addresses some common questions that arose in the first reporting cycle, others remain unanswered, leaving business to decide for themselves whether and how to report.

Generally, the Guidance provides clarity in three areas central to businesses which have to issue reports (referred to as “reporting entities”) (1) who must report (2) what the report must contain (3) how the report must be filed. Entities should expect to be able to rely on this Guidance for the next reporting period, for which reports are due by May 31, 2025, and possibly sooner for publicly-traded entities. This Update is limited to amendments to the Guidance as the law itself has not changed. For more information on the *Supply Chains Act*, or previous versions of the Guidance from Public Safety Canada, see our previous Update published on January 15, 2024, as well as our May 5, 2023 blog post and guide for businesses,

Update 1: who has to report?

As described in our guide for businesses, to determine if a business has a reporting obligation under the Act, there are two central questions to ask (1) is your business or an affiliate an “entity”? (2) if so, does your business engage in specified activities (referred to as “reporting activities”)? If the answer to both questions is “yes”, then your business is a reporting entity and must report. The Guidance provides helpful clarity with respect to each of these elements.

1. Is your business an 'entity'?

The Guidance clarifies some elements of the test businesses should undertake to determine if they are an "entity" for the purposes of the Act. In many instances, the Guidance formalizes approaches taken by businesses in the last reporting year (when guidance was more limited). Specifically

- a business may be an "entity" where it has, among other things, "assets in Canada" and is "doing business in Canada". The Guidance limits "assets in Canada" to tangible property (i.e., excludes intellectual property, securities, and goodwill). This is a reversal of the previous guidance which included intangibles. The Guidance also states that entities may rely on the Canada Revenue Agency's existing factors to determine whether a business is "carrying on business in Canada" for GST/HST purposes to determine if they are "doing business in Canada" for the purposes of the *Supply Chains Act.*
- unless traded on a Canadian stock exchange, a business also needs to meet certain asset, revenue or employee thresholds to be an "entity". The Guidance clarifies that intangible assets included on an entity's financials can be excluded from the threshold calculations. Further, for the purposes of these threshold calculations, "employees" is no longer defined by reference to Canadian common law — full-time, part-time, and temporary employees in any jurisdiction (including Canada) are included, and independent contractors are excluded.

2. Does the entity have to report?

An entity has a reporting obligation only where it engages in specified reporting activities. The Guidance clarifies the nature and scope of these reporting activities. Importantly, although the Act includes the sale and distribution of goods as a reporting activity, the Guidance indicates that Public Safety does not intend for an entity to have to file a report, and will not enforce the Act against such entity if that entity only sells or distributes goods, but does not produce or import them. That is, while the Act has not been amended (meaning an entity engaging only in sales and distribution has a reporting obligation), the Guidance provides a reasonable basis for an entity that only sells or distributes goods (and does not manufacture or import them), not to file a report.

The guidance also explains the meaning of "importing goods into Canada" by clarifying that "goods" for the purposes of this definition includes only "tangible physical property", and that the entity "importing" the goods is the entity that, in reality, caused the goods to be brought to Canada (i.e., generally the entity that accounts for, or pays duty on the goods, and not merely a courier or customs broker).

While the Act contains no *de minimis* exemption, the Guidance maintains Public Safety's previous position that an entity is not required to report when the value of its production or imports is very small. The Guidance clarifies that the terms "producing" and "importing", as used in the Act, should be "understood as excluding very minor dealings which may be interpreted in accordance with generally accepted principles of *de minimis* and evaluated within the context of each entity's business". This is still ambiguous, and leaves an entity with discretion in determining whether this exemption applies to its business.

An entity may also have a reporting obligation where it controls another reporting entity. The Guidance refers entities to the Office of the Superintendent of Financial Institutions guidance on “control” to assess whether an entity “controls” a direct or indirect subsidiary entity.

Update 2: what must the report contain?

While many entities were already using reports produced to comply with their reporting obligations in other jurisdictions, the Guidance clarifies that entities may do so provided all reporting requirements of the Act are included, and the report covers the appropriate reporting period dictated by the Act. An entity relying on this approach should be mindful of the specific requirements of the Act (including statements around remediation measures, which are not common in other jurisdictions), as well as timing requirements (i.e., if the Canadian report must be filed or sent to the company’s shareholders earlier than reports in other jurisdictions).

The Guidance also makes clear that specific levels of detail in disclosure are not generally required, and that the purpose of the Act is to encourage transparency and not to penalize reporting entities. For example, an entity need not disclose any specific instance or allegation of forced or child labour, and where specific responses are provided, they may be anonymized. Further, general descriptions of how an entity assess and manages potential risks is sufficient. An entity is not required to certify that it is “risk-free”. Similarly, an entity may note that it is in the process of developing policy or procedure respecting forced or child labour, even if not complete or implemented.

The Guidance still includes a form attestation which may be used to approve the report. While representatives from Public Safety had anecdotally advised that the form attestation was not required for the last reporting cycle, the Guidance now confirms this, referring to the form as an “example”. Reporting entities should consider steps to appropriately revise and scope this attestation, if they have not already done so. The Guidance also clarifies that the attestation can include either a wet or electronic signature.

Update 3: how must the report be filed and distributed to shareholders?

Notably for entities incorporated under the *Canada Business Corporations Act* or any other Act of Parliament (with the requirement to “provide” their report to shareholders), the Guidance clarifies that these entities may do so using their “standard means of delivery”. This suggests that, subject to compliance with securities laws, the use of notice and access by public companies is permissible.

The Guidance also includes helpful clarifications with respect to Public Safety’s questionnaire. As with the last reporting cycle, entities and government institutions must complete this questionnaire to file their reports, even though doing so is not itself a legal requirement under the Act. The Guidance confirms that the governing body approving the report does not need to approve the questionnaire, and that it is up to the reporting entity to determine who will complete the questionnaire. Those with reporting obligations should keep in mind that the individual completing the questionnaire may be contacted by Public Safety in the event of any questions.

Entities are encouraged to retain a repository of their annual reports. It is unclear whether old reports will continue to be posted in the government’s registry at the end of the following reporting cycle.

OSLER

Government institutions

The updates to the Guidance for government institutions with a reporting obligation were more limited. However, there were a few material updates that government institutions should be mindful of when determining whether they are required to file a report.

Notably, the Guidance clarifies provincial and municipal governments and other public organizations (such as publicly-funded universities or hospitals) are not subject to the reporting requirements as government institutions. Certain provincial Crown corporations, other provincial or municipal government bodies, or publicly-funded institutions may fall under the definition of an “entity” and have a reporting obligation on that basis.

Like the Guidance for Entities, the Guidance for government institutions clarifies the *de minimis* threshold for producing, purchasing or distributing goods — specifically, by attempting to clarify the intended meaning of “very minor dealings”. To this end, the Guidance for government institutions expressly excludes goods purchased using an acquisition card from the scope of the reporting obligation.

Prioritizing education

In 2024, the government took no enforcement action under the Act. This is consistent with statements from Public Safety, that in the first year of reporting, the government would be focusing on “education” (i.e., raising awareness of the Act and its requirements), as opposed to enforcement. Public Safety has advised that, in the second year of the reporting cycle, it again intends to prioritize education over enforcement. However, it should be borne in mind that this position could change under a new government.

New legislation?

In December 2024 Minister Ng, Minister of Export Promotion, International Trade and Economic Development, announced the Liberal government’s intention to introduce legislation to create a new supply chain due diligence regime, and to establish a new oversight agency to ensure ongoing compliance. With Parliament currently prorogued, and an election expected as early as this spring, it seems unlikely any such legislation will be introduced soon. It remains to be seen whether the next federal government will pick up the mantle of any such legislative action.

Accordingly, for 2025, businesses should expect the status quo. In many ways, the Guidance confirms and formalizes positions taken by reporting entities in the previous year. Perhaps most notably, the decision to publish revised Guidance so late in the 2024 calendar year, and to hold an information session in January, is a clear signal to businesses with a nexus to Canada that they should prepare to file reports for the 2025 reporting cycle, much as they did for 2024.