

CANADA'S MODERN SLAVERY ACT (BILL S-211)

SHIFT Happens: Canada's Modern Slavery Act Mandates New Disclosure Requirements in Corporate Supply Chains

Background

On May 3, 2023, the Canadian Parliament passed Bill S-211, the Fighting Against Forced Labour and Child Labour in Supply Chains Act, otherwise known as the Modern Slavery Act. This Act, aimed at combating forced labor and child labor in corporate supply chains, will come into effect on January 1, 2024. Once the Act receives royal assent it will introduce new reporting obligations on Canadian entities that meet the threshold, as outlined below.

More specifically, the reporting requirement includes an annual public report indicating efforts to identify and prevent forced labor and child labor¹. It also amends the Customs Tariff to prohibit the importation of goods associated with these two human rights violations.

The first annual report will be required to be filed and published on or before May 31, 2024.

¹ The Canadian definitions of both "child labor" and "forced labor" are adopted from the definitions provided in Article 3 of the International Labour Organization (ILO) Worst Forms of Child Labour Convention (1999) and Article 2 of the ILO Forced Labour Convention (1930), respectively.

Modern Slavery Act: Who Does it Apply to?

Eliminating human rights violations, such as forced labor and child labor, is a fundamental corporate sustainability issue that has garnered increasing attention in recent years. The Modern Slavery Act aims to prevent Canadian consumers from unintentionally supporting slavery by pressuring Canadian companies to assess their supply chains. This legislation is precedent-setting in Canada, following countries like Australia, France, the UK and Germany, each having enacted their own modern slavery laws.

The Act applies to any private-sector entity that is listed on a Canadian stock exchange or has a place of business, assets, or conducts business in Canada, provided they meet at least two of the following criteria:

- have a minimum of \$20 million in assets,
- have a minimum of \$40 million in annual sales, or
- have at least 250 employees.

Control of a Canadian entity that meets these thresholds may result in a reporting requirement for non-residents, subject to further regulation or guidance that the government may issue. The Act also extends jurisdiction over foreign entities that have some presence in Canada or do business in Canada.

Reporting obligations also apply to federal government institutions, which include federal government ministries, departments, and Crown corporations. It mandates that these organizations prepare and submit an annual report that outlines the measures they have taken to mitigate the risk of forced labor or child labor across their supply chains.

Disclosure Requirements: What Needs to be Reported?

For any company to meet the disclosure requirements of the Modern Slavery Act, it must include the following information in its annual Supply Chain Risk Report:

1. The entity's corporate structure, activities, and supply chains.
2. Policies and due diligence processes in relation to forced labor and child labor.
3. The parts of its business and supply chain that pose a risk of forced labor or child labor, and the steps taken to assess and mitigate that risk.
4. Measures taken to remediate instances of forced labor or child labor, including measures taken to compensate vulnerable families for any loss of income.
5. Modern slavery awareness training compliance for staff.
6. A self-assessment on how effective the entity believes it is at ensuring that forced and child labor are not being used across its business.

The annual Supply Chain Risk Report must be approved by an organization's governing body (i.e. Board of Directors) and submitted to the Minister of Public Safety and Emergency Preparedness (the "Minister") **by May 31 of each year.**

The Act creates personal liability for corporate Directors and Officers, who have a fiduciary duty to act in good faith and in the best interests of their reporting organization, as well as to provide informed and meaningful oversight that considers stakeholder interests.

Non-Compliance: What are the Implications?

The Modern Slavery Act grants broad government authority to conduct inspections and verify compliance. Offences under the Act include failure to comply with reporting requirements, providing false or misleading statements to the Minister, non-compliance with an order issued by the Minister, failing to participate in an inspection, or obstructing an inspection. The penalties for such offences are severe: the federal Minister can impose fines of up to \$250,000 on individuals or entities that violate the Act.



Bill S-211 imposes personal liability on Directors, Executives, and other individuals who direct, approve, consent to, or participate in an offence under the Act.

What does this mean for Canadian Business?

The Modern Slavery Act has received strong support across political parties in the House of Commons. **The first report required under the Act is due by 31 May 2024. Entities subject to the Act should begin preparing now.**

The passage of Bill S-211 will create a further compliance imperative for Canadian government institutions and private sector businesses to enhance their human rights due diligence and proactively identify and eliminate forced labor and child labor in their supply chains. The reporting requirements under the Bill will increase transparency and accountability across corporate supply chains. It is intended to expose any instances of forced labor and child labor that are identified, which could lead to public and stakeholder scrutiny of the human rights track records of Canadian businesses. This increased scrutiny is expected to discourage upstream suppliers from engaging in such practices if they want to continue supplying goods to the Canadian market.

Bill S-211 is an important step in Canada's fight against modern slavery and will help to ensure that Canadian businesses and government institutions are held accountable for their actions in this area. Organizations will need to act quickly if they want to establish a compliance process before their first report is due. Even if an organization is not currently subject to the Act, these risks should be considered as part of their broader sustainability strategy and accounted for through their environment, social and governance (ESG) performance and disclosure.

Conclusion: How Shift Critical International Can Help

Organizations that meet the thresholds above should review their supply chain human rights due diligence and ensure proper governance structures are in place to identify and mitigate risks. This involves, for example, a supply chain review and risk assessment to understand the extent to which child labor or forced labor exists within their sphere of influence.

The experience level of the Shift Critical team is unmatched when considering corporate sustainability strategy development, ESG performance disclosure and human rights due diligence/risk assessment. Our team is ideally positioned to assist with solutions and tools that can easily build reports and manage your sustainability-related needs. This includes implementing governance measures to identify, mitigate and prevent human rights risk across your operations and supply chain. More specifically, our team of Human Rights experts can help you with:

1. Conducting human rights due diligence to identify parts of your business and supply chains that carry a risk of forced labor or child labor.
2. Made-for-purpose policy development and implementation (e.g., Sustainability Policy, Human Rights Policy, Supplier Code of Conduct; etc.) to ensure your employees and suppliers are aware of their obligations to reduce the risk of forced and child labor.
3. Board of Director and Executive Leadership Training on the Act to support their ability to meet reporting obligations.
4. Advising on how to meet ESG reporting and compliance obligations under the Act, including development of the Supply Chain Risk Report.

Contact a member of our team today if you have questions about how the Act may affect your organization and how to ensure you're meeting your compliance obligations.



THE SHIFT CRITICAL TEAM

Craig Stenhouse, MSc, Principal & Founder

Craig has over 20 years of experience integrating sustainability strategy into business processes and demonstrating ESG performance to external stakeholders. His career has largely focused on designing solutions to complex sustainability issues, building relationships with investors and providing strategic advice to corporate Executives and Board members on ESG performance improvement and human rights risk assessment. Craig has led numerous corporate teams in support of sustainability strategy, policy development and human rights risk assessment. He has served as a Board observer to a number of private technology companies working on solutions to improve ESG performance.

His contributions to the field of sustainability in Canada have been acknowledged with an Excellence in Corporate Responsibility Award, which recognized his leadership in “transforming business towards a sustainable future”. Craig is a Master of Science graduate from the London School of Economics and Political Science where he focused on Business and Human Rights.

cstenhouse@shiftcritical.ca

www.linkedin.com/in/craig-stenhouse

Frank McShane, PhD, Principal & Founder

Frank has over 20 years of experience leading sustainability teams within major resource companies. He is an expert in developing and implementing strategic solutions to sustainability challenges, including human rights risk assessment and aiding access to sustainable finance. Frank has worked across multiple stakeholder groups on a range of contentious resource development matters, both within and outside Canada. His expertise in the field of business and human rights was recognized when he was elected as a member of the Steering Committee and Board for the Voluntary Principles on Security and Human Rights.

Frank's experience in sustainability includes co-authoring a leading report on sustainability in the mining sector and time spent teaching Resource Management/Sustainability at McGill University and as guest faculty on the Executive Program in Corporate Social Responsibility held in Cape Town, South Africa. Frank has a Doctorate from McGill University and is formerly an Associate- Faculty member of the Executive Program in Corporate Social Responsibility (CSR) at McGill University.

fmcshane@shiftcritical.ca

www.linkedin.com/in/frankmcshane