

FAQ: Forensic Laboratories Act, 2018

Please note that the content in this FAQ is provided for general informational purposes only and does not constitute legal advice.

General Questions:

1. What is the *Forensic Laboratories Act (FLA)*?

The FLA makes accreditation mandatory for laboratories that are operating in Ontario and perform certain categories of forensic tests for legal purposes. The mandatory accreditation requirement will improve accountability and help ensure forensic laboratory quality control through a multi-faceted framework.

The full text of the FLA and its regulations can be found at the following links:

Forensic Laboratories Act, 2018 (FLA): <https://www.ontario.ca/laws/statute/18f03>

O. Reg. 285/22: <https://www.ontario.ca/laws/regulation/r22285>

O. Reg. 286/22: <https://www.ontario.ca/laws/regulation/r22286>

2. Why is the province mandating the accreditation of forensic laboratories?

Prior to the passage of the *Forensic Laboratories Act (FLA)*, there was no legislation in Ontario that established requirements for forensic testing by requiring laboratories that conduct forensic tests to be accredited or to disclose their accreditation status. The FLA reduces gaps in accountability in the field of forensic science noted in reports such as the independent review of the Motherisk Drug Testing Laboratory in 2015.

Once in force, the FLA will ensure that all forensic labs conducting certain categories of testing in Ontario meet consistent standards.

3. Why is the in-force date over a year away given that the FLA was passed in 2018?

The in-force date of January 1, 2024 will provide a transition period to give affected laboratories an appropriate amount of time to come into compliance with the *Forensic Laboratories Act (FLA)* and its regulations.

4. What are the main requirements that laboratories will have to meet?

The *Forensic Laboratories Act (FLA)* will apply to laboratories that conduct prescribed tests in forensic biology, toxicology, or drug analysis, for the purpose of a legal proceeding, other legal purpose, or pursuant to an order of a court or other lawful authority. These laboratories will have to be accredited to a standard outlined in

regulation O. Reg. 286/22: Tests, Accrediting Bodies, Standards and Information. Laboratories conducting applicable tests done for legal purposes will also be subject to certain reporting requirements.

5. How is ‘other legal purpose’ defined in section 2(1)(b) and section 3(1)(b)(ii)(B) of the *Forensic Laboratories Act* (FLA)?

The FLA does not currently define ‘other legal purpose’.

The Act includes a regulation-making power that would allow for the development of a regulation to prescribe what “other legal purpose” includes or does not include for the purposes of sections 2 and 3. However, regulations have not yet been made in this area.

6. What will the *Forensic Laboratories Act* (FLA) coming into force mean for Ontarians?

Bringing the FLA into force will address the government’s commitment to strengthen requirements for forensic laboratories in Ontario through legal requirements to improve accountability in forensic testing. The FLA and its regulations will help address recommendations from multiple inquiries and reports.

Once in force, the FLA will ensure that all forensic labs conducting certain categories of testing meet consistent standards if they are to operate in Ontario. This will support public confidence in forensic testing following harmful outcomes of past bad practices.

Questions: Categories of Laboratories Covered by Regulations

7. What categories of testing will be regulated?

The following categories of tests, listed in section 2 of O. Reg. 286/22, will be subject to the requirements of the *Forensic Laboratories Act* (FLA):

- Forensic toxicology tests that detect or identify the presence of alcohol, drugs, or poisons in human biological samples, other than an analysis or test that is conducted with an approved screening device.
- Forensic biology tests that identify human bodily substances, or compare human DNA profiles, to determine associations between items, places, and people.
- Drug analysis or profiling tests to identify or quantitate drugs or controlled substances.

The FLA’s accreditation and reporting requirements will only apply to laboratories conducting tests in the test categories listed above, when they are conducted for the

purpose of a legal proceeding, other legal purpose, or pursuant to an order of a court or other lawful authority.

8. What is the rationale for regulating only those three categories of testing?

These categories were based on engagement with the Forensics Advisory Working Group, a diverse group of experts in included representatives from the laboratory sector, police, academia, and social services, in addition to consultations with the clinical laboratory sector. These categories of testing capture the majority of testing conducted by large laboratories.

9. Will the *Forensic Laboratories Act* (FLA) apply to federal laboratories, or to laboratories outside of Ontario?

No. As the FLA is a provincial act, it will not apply to laboratories operated by federal Crown entities, or to laboratories operating outside of Ontario.

10. Will the *Forensic Laboratories Act* (FLA) apply to police agencies that conduct testing?

The FLA will apply to Forensic Identification Units if they operate a laboratory that conducts tests in any of the categories of tests listed in section 2 of [O. Reg. 286/22](#) for the purpose of a legal proceeding, other legal purpose, or pursuant to an order of a court or other lawful authority.

The FLA will not apply to police agencies that perform breath testing or conduct testing for screening and investigative purposes only.

Questions: Laboratory Accreditation

11. What are accreditation and accreditation bodies?

Accreditation is a third-party recognition that laboratories have met the acceptable international standards for testing. Accreditation bodies ensure that a laboratory has demonstrated compliance with international testing and forensic standards and maintains compliance with these standards.

12. What standards are laboratories affected by the *Forensic Laboratories Act* (FLA) required to meet?

The requirement for laboratory accreditation is listed in [section 2 of the FLA](#), and accreditation standards that affected laboratories must meet are listed in sections 3 and 4 of [O. Reg 286/22](#).

These accreditation requirements will apply to laboratories conducting prescribed tests for the purpose of a legal proceeding, other legal purpose, or pursuant to an order of a court or other lawful authority.

Generally, affected laboratories will have to be accredited for complying with:

- International Standard ISO/IEC 17025:2017 as it may be amended from time to time; and
- any portions of International Laboratory Accreditation Cooperation standard ILAC G19/2022 as it may be amended from time to time, that the accrediting body determines to be applicable

ISO 17025 is an internationally recognized standard for testing and calibration laboratories and is an accepted standard within the industry.

Medical laboratories (i.e. laboratories within the meaning of the Laboratory and Specimen Collection Centre Licensing Act) conducting prescribed tests for the above purposes, if they are already accredited for complying to International Standard ISO 15189:2012 as it may be amended from time to time, will need to be accredited for complying with:

- any portions of International Laboratory Accreditation Cooperation standard ILAC G19/2022 as it may be amended from time to time, that the accrediting body determines to be applicable

This includes medical laboratories that undertake workplace testing. Depending on the circumstances, workplace tests may be captured by the FLA once the Act and its regulations are in force.

13. Will the province recommend accreditation bodies?

No, the province will not recommend any one accreditation body. Under section 3 of O. Reg. 286/22, every signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Agreement is prescribed as an acceptable accreditation body for the purposes of the *Forensic Laboratories Act* (FLA). All signatories to the ILAC Mutual Recognition Arrangement have been peer reviewed for conforming to an international standard to demonstrate their competence as accrediting bodies.

ILAC promotes international confidence in and acceptance of data from accredited laboratories and ensures consistency among the standards that accreditation bodies require.

14. What is the cost associated with becoming accredited to the standards prescribed in the *Forensic Laboratories Act* (FLA)?

Accrediting bodies charge laboratories for providing accreditation services, the fees for which are determined by the accrediting body.

Many labs in the province that conduct the forensic testing set out in the regulation are already accredited and will not incur additional or new costs for accreditation as a result of the FLA coming into force.

15. Will the government provide funding for laboratories to assist with the costs associated with accreditation?

No, the province is not proposing funding at this time. However, many laboratories conducting prescribed categories of tests in the province are already accredited and will not have any new accreditation costs associated with the *Forensic Laboratories Act* (FLA) coming into force.

Questions: Test Result Reporting Requirements

16. What are the requirements for reporting prescribed test results?

The requirements for reporting the results of prescribed tests are listed in detail in section 3 of the FLA and section 5 of O. Reg 286/22.

Laboratories must provide the following information when providing the results of a *prescribed* test conducted for the purpose of legal proceedings, for some other legal purpose, or pursuant to an order of a court or other lawful authority:

- A statement that the test was conducted for a forensic purpose.
- The International Organization for Standardization standard to which the laboratory was accredited for the test conducted on the date the test was completed.
- A statement describing what the test is designed to analyze.

The required information is different if providing the results of *a test that was conducted in the laboratory for the purpose of diagnosis, prevention or treatment* that are requested for the purpose of legal proceedings, for some other legal purpose, or pursuant to an order of a court or other lawful authority:

- A statement that the test was conducted for a medical purpose.
- The International Organization for Standardization standard to which the laboratory was accredited for the test conducted on the date the test was completed.

17. Why is this reporting requirement being added?

Under the ISO standards prescribed by the *Forensic Laboratories Act* (FLA), laboratories must already meet certain reporting requirements. Consultations with stakeholders from the child protection, justice, legal, and social work sectors, signalled the usefulness of an increased understanding of forensic test results.

By requiring laboratories to provide a statement as to whether a certain test was conducted for a medical or forensic purpose, as well as a statement describing what the test was designed to analyze, the main users of forensic and medical test result information in legal contexts will be able to better understand the origin and purpose of those results.

Questions: Stakeholder Communications

18. How have stakeholders been engaged on the development of regulations under the *Forensic Laboratories Act* (FLA)?

To inform regulation development, the ministry established the Forensic Advisory Working Group to obtain advice on research, best practices, education, and training in the field of forensic sciences. The Working Group included representatives from the laboratory sector, police, academia, and social services.

During regulatory development, the ministry also had discussions with clinical laboratories to determine the prevalence of forensic testing performed in clinical laboratories and any potential impacts of the FLA.

19. Did the Ministry of the Solicitor General work with other ministries on the draft regulations, and were they shared with stakeholders or the public?

The draft regulations were shared with members of the Forensic Advisory Working Group and partner ministries that have stakeholders in sectors that may be impacted by the FLA. This includes the Ministry of Health, Ministry of Long-Term Care, Ministry of the Attorney General and Ministry of Children, Community and Social Services.

The FLA draft regulations were also posted on the Ontario Regulatory Registry (ORR) for public feedback from late 2021 to early 2022 for a period of 45 days. Feedback from the registry posting was used to help finalize the regulations.

20. Will there be further information from the ministry about the *Forensic Laboratories Act* (FLA)?

Yes, further information from the ministry on the implementation of the FLA will be communicated closer to the in-force date.

21. How can I submit my question regarding the *Forensic Laboratories Act* (FLA) to the ministry?

Questions regarding the FLA and its regulations may be submitted to the Ministry of the Solicitor General at solgeninput@ontario.ca.