



# THE GLOBAL FOOD DONATION POLICY ATLAS

## Executive Summary: Canada

*More than enough food is produced to feed every person, yet one-third of all food is wasted. Redirecting safe, surplus food is an effective and compassionate solution, but it can be complicated because food is a heavily-regulated product.*

To help address the most pressing and universal legal and policy questions surrounding food recovery and donation, the **Harvard Law School Food Law and Policy Clinic (FLPC)** and **The Global FoodBanking Network (GFN)** have partnered to create The Global Food Donation Policy Atlas. This innovative partnership will map the laws and policies affecting donations in 15 countries over the course of two years. The project aims to: identify and explain national laws relating to food donation, analyze the most common legal barriers to promoting greater food donation and share best practices and recommendations for overcoming these barriers.

### CANADA FOOD LOSS AND WASTE

Over half of food produced in Canada, or 11 million metric tons, is lost and wasted annually, and almost one-third of such lost and wasted food is avoidable. At the same time, 8.7% of Canadian households were food insecure in 2018. Canada has attempted to address food waste through tax incentives for food donations. In addition, every Canadian province has enacted liability protection legislation to protect food donors from civil liability arising from food-related injuries and four provinces have enacted tax incentives for food donations. However, studies still show that Canada’s food loss and waste is worth nearly \$50 billion in direct costs and over \$100 billion in indirect costs, including labor, infrastructure, and energy.

#### Canada: By the Numbers

- Population: 36,136,000
- GDP: \$1.709 trillion
- Poverty Rate: 8.7%
- Prevalence of Severe Food Insecurity: 3%
- Global Food Security Index: 82.4
- Food Sustainability Index: 75.3
- FLW Estimates: 11 million metric tons

### CANADA FOOD DONATION POLICY HIGHLIGHTS

**LIABILITY PROTECTION FOR FOOD DONATIONS:** While liability protection has not been enacted at the federal level, **each province in Canada as well as the Northwest Territories and Yukon Territory have passed laws to provide protection from civil liability to both companies and individuals who donate food.** Liability protection is not absolute; in most of the provinces, acting with reckless disregard or an intent to injure can still result in liability.

**ACTION OPPORTUNITY:** While strong liability protection for food donation is provided at the provincial level, there exist differences between the laws as well as areas of ambiguity within the laws that may lead to confusion for donors and distributing organizations. In order to eliminate any confusion around liability protection for food donations, the Canadian federal government should enact legislation that provides comprehensive liability protection for food donations. While such a federal liability protection law could largely be modeled after those passed by the provinces, it should clarify any areas of ambiguity and expand the scope of liability protection

**GOVERNMENT GRANTS AND INCENTIVES:** Canada stands among countries as one of the few that offers governmental support. The recently introduced Food Policy for Canada includes a \$26.3 million fund to provide resources for the most innovative food waste reduction proposals as well as a Local Food Infrastructure Fund—a five-year, \$50 million initiative offering two different funding streams for organizations seeking to strengthen food systems and increase access to safe and nutritious foods.

## **CANADA FOOD DONATION POLICY OPPORTUNITIES**

**FOOD SAFETY FOR DONATIONS:** One area for action in Canada is to clarify the food safety rules that apply to donated foods, as the country has no clear regulations or guidance regarding the requirements or best practices for safety of donated foods, and no province appears to have created such resources at the provincial level.

**ACTION OPPORTUNITY:** To ensure that food is donated safely and does not pose risks to recipients, as well as provide clarity to encourage food donors, the federal government should **amend Canada's food safety legislation, the Food and Drugs Act and the Safe Food for Canadians Act, to feature donation-specific sections** to eliminate the uncertainty around which FDA and SFCA provisions apply to the safety of donated food. In addition, or alternatively, the federal government should **produce and disseminate clarifying guidance** on food safety requirements relevant to donation.

**DATE LABELING:** Unclear and misleading date labels in Canada lead to food being wasted rather than donated. Canada's labeling regime requires standard labels to distinguish certain foods that are likely to decline in quality past the date versus those that will decline in safety. However, the federal government also allows food businesses to choose to include date labels on other products, meaning that a wide range of products carry differing date labels in Canada. This system of both mandatory and voluntary date labeling leads to confusion, which may be a barrier to donation.

**ACTION OPPORTUNITY:** To ensure that quality-based date labels do not result in the disposal of food that is otherwise safe for consumption or donation, the federal government should **standardize and clarify date labels**, requiring that manufacturers or retailers who choose to affix date labels on foods use only one of two prescribed labels that are based on whether the product is labeled to indicate a decline in quality versus a safety risk, and **should promote consumer education and awareness on the meaning of date labels**, once the labels are standardized.

**TAX INCENTIVES:** Federal law offers a charitable donation tax credit to individuals and a charitable deduction for corporations. While the federal and provincial charitable donation tax incentives are technically available for donations of food, many donors do not benefit from these incentives, for several reasons. First, claiming the tax incentives is practically burdensome due to the difficulties associated with calculating the fair market value of the food that is donated. Additionally, under Canada's current tax system, corporations that donate goods out of their inventory have to add the value of those goods to their income before deducting it, essentially eliminating any financial benefit of the deduction. Further, the charitable deduction may not adequately incentivize farmers, who may

not generate sufficient income during the year to benefit from the deduction.

**ACTION OPPORTUNITY:** To ensure that businesses and farmers can benefit from the charitable deduction, the federal government should **eliminate the requirement that food businesses add the value of the inventory items to their total taxable income** before deducting that value for the tax deduction; **issue federal guidance** establishing that the fair market value for unsaleable items is the same as for saleable items; and **create a federal tax credit** for farmers who donate agricultural products.

## **CANADA FOOD DONATION POLICY: HOW DOES IT COMPARE?**

In terms of policy successes, Canada has adopted progressive policies at the provincial level with respect to liability protection and provided generous grant funding at the federal level for food recovery efforts. These policies effectively promote food recovery and donation efforts. However, the existing framework can be strengthened by clarifying and standardizing date labels, providing better guidance on food safety rules that apply to donated foods, and strengthening the federal tax incentive for food donation.

<b>Food Safety for Donations</b>	<b>Date Labeling</b>	<b>Liability Protection for Food Donations</b>	<b>Tax Incentives</b>	<b>Tax Barriers</b>	<b>Donation Requirements or Food Waste Penalties</b>	<b>Government Grants and Incentives</b>
<b>No policy</b>	<b>Weak Policy</b>	<b>No policy</b>	<b>Weak Policy</b>	<b>No policy</b>	<b>Weak policy</b>	<b>Weak Policy</b>

For more detail on how Canada measures up against the other countries evaluated in the Global Food Donation Policy Atlas project, check out [www.atlas.foodbanking.org](http://www.atlas.foodbanking.org). For more information about the food donation legal framework in Canada and policy recommendations for strengthening this framework, check out the Canada Food Donation Legal Guide and the Canada Food Donation Policy Recommendations.

## BACKGROUND INFORMATION: MAJOR LEGAL ISSUES IMPACTING FOOD DONATION

**Food Safety for Donations:** A key barrier to food donation is lack of knowledge regarding safety procedures for donated food. All donated food should be safe for consumption and comply with applicable food safety laws. Potential donors, however, are often uncertain which food safety regulations apply to donated food and the steps necessary to comply.

**Date Labeling:** Date labels, such as “use by,” “best before,” “sell by,” and “expires on,” are a major driver of food waste and obstacle to donation. For the majority of foods, date labels are used by manufacturers to reflect freshness or quality rather than safety, yet without standard labels delineating safety versus quality, safe food often goes to waste rather than being donated.

**Liability Protection for Food Donations:** A significant barrier to food donation is the fear among donors that they will be liable if someone becomes sick after consuming donated food. Many countries are moving to adopt liability protections to mitigate this concern. In such countries, donors and food recovery organizations may still face uncertainty as to the parameters of this protection.

**Tax Incentives and Barriers:** Donating surplus food can be expensive, as food donors must allocate time and money to glean, package, store, and transport surplus food that otherwise would be discarded, usually at no cost. Tax incentives (deductions or credits), can help offset these costs and make donation a more attractive option. In some countries, such as several countries with a Value Added Tax, tax schemes are themselves a barrier to donations.

**Donation Requirements or Food Waste Penalties:** Some countries have employed food donation requirements or impose monetary penalties for food that is sent to the landfill (often known as organic waste bans or waste taxes) in order to influence business behavior and promote more sustainable solutions such as food donation and recovery.

**Government Grants and Incentives:** Grants and incentive programs funded at the federal or local level offer another important resource for food donation initiatives. This is particularly true in countries where donors consider tax incentives to be insufficient to offset the costs of donation or where a lack of infrastructure limits food recovery efforts.

## GLOBAL FOOD DONATION POLICY ATLAS PROJECT SUPPORT

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