The *Canada Consumer Product Safety Act*

10 Things You Need to Know

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Introduction

- CCPSA entered into force on June 20, 2011

- Replaces Part I of the *Hazardous Products Act*
  - although substance of the HPA is retained

- Substantially changes the existing regulatory regime for "consumer products"
  - Reporting incidents
  - Maintaining records
  - Prohibitions on manufacturing, importing, selling or advertising consumer products that endanger health or safety

Introduction

- Aligns tracking and enforcement powers with:
  - *Canadian Environmental Protection Act;*
  - *Pest Control Products Act;* and
  - legislation administered by the Canadian Food Inspection Agency
- Harmonizes Canadian consumer product safety legislation with US *Consumer Product Safety Act*
- Administrative protocols still being developed

10 Things You Need to Know

1. Application of the CCPSA
2. Prohibitions
3. Preparing and Maintaining Documents
4. Mandatory Incident Reporting
5. Disclosing Information
6. Inspectors' Powers
7. Corrective Measure Orders
8. Recall Orders
9. Compliance and Enforcement
10. Tort Law Implications

1. Application of the CCPSA

- "consumer product" means a product that may reasonably be expected to be obtained by an individual to be used for non-commercial purposes
  - An objective test best assessed through method(s) of distribution
- Includes a product's components, parts, and accessories
- "non-commercial purposes" include domestic, recreational and sports

1. Application of the CCPSA

- Obligations for those who:
  - Manufacture
  - Import
  - Sell
  - Advertise
  - Test
  - Package or label

…consumer products in Canada

1. Application of the CCPSA

- CCPSA does not apply to certain products addressed by other legislation:
    - Cosmetics
    - Drugs
    - Natural health products
    - Food
    - Medical devices
    - Explosives
    - Ammunition
    - Tobacco (CCPSA applies only in respect of ignition propensity)

2. Prohibitions

- Prohibited products
  - Schedule 2 of the Act: e.g. baby walkers, kite strings conducting electricity

- Products not in compliance with the regulations
  - E.g. cribs, children's sleepware, lighters, kettles

2. Prohibitions

- Products endangering human health or safety
  - **Manufacturers/importers** may not manufacture, import, advertise or sell a consumer product that is a "danger to human health or safety"
  - **No one** may advertise or sell a product *that they know is a "danger to human health or safety"*
  - "Danger to human health or safety":
    - Unreasonable hazards
    - Existing or potential hazards
    - Related to the product's normal or foreseeable use
    - Reasonably expected to have an acute or chronic adverse effect on immediate or long-term health, or causing death

2. Prohibitions

- Products subject to recall or corrective measures
  - **Manufacturers and importers** may not manufacture, import, advertise or sell a consumer product subject to recall or corrective measures
  - **No one** may advertise or sell a consumer product *that they know* is subject to recall or corrective measures

2. Prohibitions

- Misleading packaging or labeling
  - **No one** may package or label a consumer product with false, misleading, or deceptive claims about human health or safety

- False or misleading information to Health Canada
  - Offence to knowingly provide false or misleading information in relation to a matter under the CCPSA or regulations

3. Preparing and Maintaining Documents

- Anyone who **manufactures, imports, advertises, sells or tests** a consumer product must prepare and maintain records
- Purpose: to facilitate tracing through supply chain

  - **Retailers:**
    - Name and address of person from whom they obtained product
    - Location of sale
    - Time period of sale

  - **Anyone else:**
    - Name and address of supplier and/or buyer

- Documents must be kept 6 years, at place of business in Canada

4. Mandatory Incident Reporting

Triggering the reporting requirement (part 1)

- A consumer product manufactured, imported or sold in Canada

- …Is connected to an event that indicates an unreasonable hazard posed by:
  - the normal or foreseeable use of the product, or
  - the foreseeable misuse of the product *(HC Guidelines)*

- …and the event is meets the criteria of an "incident" *(HC Guidelines):*
  - Death or serious adverse effects on health, including serious injury (actual or near miss)
  - Defect or characteristic of product or incorrect or insufficient label or package information, that may result in serious adverse effect
  - Recall/measure in another jurisdiction

4. Mandatory Incident Reporting

Triggering the reporting requirement (part 2)

Health Canada Guidelines:

- "manufacturers, importers or sellers would be expected to report an incident within two days after the day on which a responsible person becomes aware that an incident has occurred with respect to a consumer product that they supply in Canada.
- A responsible person is a directing mind of the organization who, through the exercise of due diligence, should become aware of an incident."
- "Who" (responsible person) and "how" (due diligence) will depend on the circumstances of each organization.

4. Mandatory Incident Reporting

Report the incident to:

- Health Canada
- "if applicable" to the supplier

Within these timeframes:

- Once "aware" of the incident *(Health Canada Guidelines: once internal decision made that an incident is reportable):*
  - Within 2 days: incident report (manufacturers, importers, sellers)
  - Within 10 days: written report (manufacturers and importers)

4. Mandatory Incident Reporting

What must be reported?

- **Incident report** (manufacturer, importer, seller) – within 2 days:
  - All information within control about the incident

- **Written report** (manufacturer) – within 10 days:
  - Information about the
    - Incident
    - Product
    - Any products that they manufacture or import in Canada that to their knowledge could be involved in a similar incident
    - Any measures they propose be taken with respect to the products

5. Disclosing Information

Confidential business information (CBI)

- Health Canada may grant CBI treatment – on 3 conditions

- However, Health Canada may disclose CBI without consent or prior notice:
  - Where CBI is "about a consumer product that is a serious and imminent danger to human health or safety or the environment, if the disclosure of the information is essential to address the danger."

Personal Information (PI)

- Health Canada may disclose PI if necessary to identify or address serious danger to human health or safety

6. Inspectors' Powers

- Health Canada inspector may, at any reasonable time, enter business premises where:
  - the inspector believes, on reasonable grounds, that
  - a consumer product is manufactured, imported, packaged, stored, advertised, sold, labeled, tested or transported.

6. Inspectors' Powers

- Health Canada Inspector has **warrantless search and seizure** powers:
  - Examining, testing or sampling anything;
  - Examining, extracting or copying a document; or
  - Directing activity to stop or start

- The owner and every person found under inspection must give all reasonable assistance and provide information.

- Limitations:
  - Connexity with statute
  - Investigation may reach a stage where search warrant is required
  - Product seizure permitted only to support inspection

7. Corrective Measure Orders

- Health Canada inspectors may also order manufacturer, importer or seller to take measures where:
  - Product is subject to recall order;
  - Non-compliance with order to carry out tests/studies, or to provide follow-up compliance information;

  OR
  - Health Canada believes on reasonable grounds that
    - Manufacturer or importer has voluntarily taken measures or recalled
    - Act or regulations have been contravened.

- Measures can include any measure deemed necessary, including stopping manufacture, import, sale, transport…

8. Recall Orders

- If Health Canada *believes on reasonable grounds* that a consumer product is a *danger to human health or safety*, may order a recall

- "Danger to human health or safety":
    - Unreasonable hazards
    - Existing or potential hazards
    - Related to the product's normal or foreseeable use
    - Reasonably expected to have an acute or chronic adverse effect on immediate or long-term health, or causing death

8. Recall Orders

- Orders can be made to manufacturers, importers or sellers
  - Will state reasons for the recall, and time/manner to be carried out
- If a person does not comply with a corrective measure or recall order, Health Canada may
  - carry out the recall or corrective measure itself
  - at the person's expense
- Anyone subject to corrective measure or recall order may request review

9. Compliance and Enforcement

- Where voluntary compliance fails, Health Canada can:
  - Issue **orders**: corrective measures, recall, testing
  - Issue **Notices of Violations** with **Administrative Monetary Penalties**
    - Options: pay; enter into compliance agreement; request review
    - Health Canada may also publish information about violations
  - Pursue **criminal charges** before the courts
    - Fines and/or imprisonment depend on severity of non-compliance

10. Tort Law Implications

- **Raising the due diligence standard** at all stages of the supply chain
- Canadian importers, distributors and retailers need to become more aware of **regulatory responses around the world**
- Incident reporting and record keeping obligations will give greater precision to **duty to warn**
- Greater incentive to mitigate exposure through **supply agreements**
  - notification obligations, broader indemnification, recall cost recovery)

Thank you.

See also: J.F. Blakney, M. Patterson and A. Lanouette, "The Canada Consumer Product Safety Act: A Review" (2011) 21(2) C.B.L.J. 211

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