

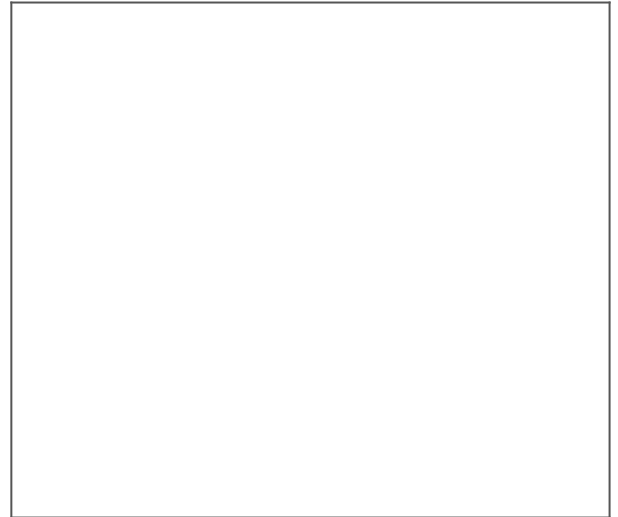
How The Canada Consumer Product Safety Act Will Change Your Business After June 20, 2011

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The *Canada Consumer Product Safety Act* (CCPSA) comes into effect on June 20, 2011.

The Act is a sweeping piece of legislation, governing anyone who manufactures, imports, advertises or sells a consumer product.

The definition of “consumer product” is broad and means *any* product, including its components, parts and accessories, that may reasonably be expected to be obtained by an individual to be used for non-commercial purposes, including domestic, recreational and sports purposes, and includes the packaging.



Certain products used by consumers, including tobacco, drugs, food, cosmetics, natural health products, pest control products, fertilizers and vehicles are excluded from the CCPSA, because they are already the subject of separate federal legislation in each instance.

The CCPSA will now replace the *Hazardous Products Act* as it related to consumer products.

Principal Features

The principal components of the CCPSA include the following:

- Prohibits the manufacture, importation, advertising or sale of any consumer product that poses, or could be expected to pose, **a danger to human health or safety, meaning an unreasonable danger arising out of the normal or foreseeable use of any product;**
- Prohibits packaging or labelling a consumer product in a manner that could create an erroneous impression regarding the fact that the product is not a danger to human health or safety;
- Requires that certain specific consumer products meet additional safety requirements over and above the general requirements of the CCPSA. These include consumer products such as candles, children’s jewellery, children’s sleepwear, hockey helmets and face protectors, booster seats, textile products, bedding, and toys;
- Contains a list of certain products for which the manufacture, importation, advertising or sale of any consumer product is strictly prohibited. These include a range of different consumer products, from certain baby products (for example, walkers) and recreational products (certain kites and lawn darts), to urea formaldehyde-based thermal insulation. The list also contains certain chemicals and materials

which consumer products may not contain. The complete list can be found as Schedule 2 to the CCPSA;

- Obligates businesses to **inform Health Canada of an adverse event anywhere in the world** regarding any of their consumer products that has resulted, or could have resulted, in death or serious adverse health effects, and/or a recall or other measure initiated by a foreign government for human health or safety reasons. **The initial report is due within two days of becoming aware, with a follow-up report including proposed remedial measures due in ten days.** Health Canada is developing web-based incident report forms for industry use. The incident report form for consumer use is already available online. The reporting obligation relates only to those incidents arising after June 20, 2011;
- CCPSA inspectors may enter any location other than a private dwelling if they believe a consumer product is manufactured, imported, packaged, stored, advertised, sold, labelled, tested or transported on or from the premises, or if they believe that relevant documents relating to those activities are stored there;
- **The Minister of Health can order a product recall, or any other measures the Minister believes are necessary to address or prevent danger to human health or safety.** In circumstances of non-compliance, Health Canada may undertake a series of enforcement measures;
- Documents relating to the manufacture, importing and distribution of a consumer product must be maintained for six full years, and provided to Health Canada upon request; and
- Penalties for breach of the CCPSA include fines up to \$5 Million and/or prison terms of up to two years.

What Affected Businesses Should Immediately Do

Businesses affected by the CCPSA should immediately review their manufacturing, advertising, packaging and labelling practices and policies, as well as their internal policies for due diligence procedures and in choosing suppliers and products for distribution, in order to best determine how to comply with the CCPSA. The provisions of existing contracts for advertising, packaging, labelling and promotion must be reviewed and re-negotiated if necessary, to ensure that risks and obligations under the CCPSA are properly met. This might well involve new provisions aimed at risk prevention mitigation.

Health Canada intends to adopt an extremely proactive role in order to make the transition from the *Hazardous Products Act* to the CCPSA as smooth as possible. Health Canada intends to promote a balanced, risk-based approach to compliance, and enforcement can be expected to address safety in the marketplace, while still allowing for the free flow of goods.

There is a wealth of CCPSA information available on **Health Canada's** website. In particular, the FAQ and Quick Reference Guide are very useful resources.

Please contact **businessdevdept@tdslaw.com** to connect with a lawyer on this topic.

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