

Consumer Product Safety and Recall Management Bulletin

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Fasken Martineau DuMoulin LLP

Proposed *Canada Consumer Product Safety Act* Receives Second Reading

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Bill C-6, the *Canada Consumer Product Safety Act* (“CCPSA”), originally tabled in Parliament on January 29, 2009, received second reading on April, 30, 2009 and has now been referred to the House of Common’s Standing Committee on Health.

The proposed legislation is intended to modernize and strengthen Canada’s product safety laws by overhauling existing rules to improve the Government’s ability to take compliance and enforcement actions when unsafe products are identified. Compliance with its provisions is encouraged through significant fines and penalties for violators.

When enacted, the CCPSA will prohibit the manufacture, importation, advertisement and sale of consumer products posing an unreasonable danger to human health or safety. Mandatory reporting by suppliers of serious product-related incidents will be required even where death or serious injury may not have occurred. Health Canada will be empowered to respond more effectively to protect the Canadian public by, in addition to other actions, being able to order the recall of unsafe consumer products. All businesses involved in a

supply chain will be required to maintain accurate records so that products can be easily traced for recall purposes.

While general support for the CCPSA was evident during the Parliamentary debates connected with its second reading, views were expressed that the proposed Act did not go far enough because, for example, it did not deal with products such as those that contain or emit known carcinogens or toxins either by providing for the outright banning of such products or by having mandatory labelling requirements. It was also suggested that the powers granted to Health Canada to restrict access to a particular consumer product may not be properly balanced with the fundamental right of Canadians to make their own choices with respect to product purchases and that, because of this, the Ministry’s prohibition powers should be subject to expert oversight.

These issues and others are now to be addressed by the Standing Committee on Health which has already held a series of hearings on Bill C-6 during the month of May.

Witnesses appearing before the Committee included representatives of the Canadian Cancer Society who submitted that the Bill be amended to provide for:

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Toronto

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London

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- the immediate implementation of chronic health risk labelling on Canadian consumer products
- the removal of the permanent exclusion from the application of the CCPSA for tobacco products and the inclusion of tobacco products in Schedule 1 of the proposed Act so that such products will be treated similar to all of the other products for which there are separate statutes that regulate them.

Given that Bill C-6 still appears to retain the support of all parties in the House of Commons, it can be expected that the Bill will continue on to the fast track for enactment by Parliament. As recommended previously, Canadian businesses should be considering the internal and external procedures and administrative support that will be

required to ensure compliance with the CCPSA when it is eventually proclaimed into law.

Caveat Venditor

The expression caveat emptor, let the buyer beware, is well known. However, with the proposed enactment of the Bill C-6, manufacturers, importers, distributors, advertisers and retailers will need to become familiar with the expression caveat venditor – let the seller beware. Fines and AMPs for offences and violations of Bill C- 6 when enacted could be significant.

For more information on the subject of this bulletin, please contact Douglas C. New at 416-865-4414 (dnew@fasken.com).

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