

Blakes Bulletin

Life Sciences

Third Time Lucky? Canadian Consumer Product Safety Bill Reintroduced

JENNIFER SMITH AND ELIZABETH MCNAUGHTON

Bill C-36, the federal government's third attempt to enact the *Canada Consumer Product Safety Act* (the Bill), was introduced into the Canadian Parliament on June 9, 2010. The proposed legislation closely follows the prior versions of the Bill commented on in earlier *Blakes Bulletins: Canada Proposes Tough New Product Safety Laws, May 2008* and *Sweeping "New" Proposed Consumer Product Safety Legislation, February 2009*.

There are a few notable changes in the current Bill, the most important of which is that the Minister of Health, not a Product Safety Inspector, would have the power to order product recalls. As set out in previous versions of the proposed legislation, the Bill would not apply to certain products regulated under other existing legislation, such as food, drugs (including natural health products), medical devices, cosmetics and pest control products. Nevertheless, if enacted, the Bill would still impact otherwise exempt organizations (e.g., food or non-prescription drug companies) that distribute non-exempted products (e.g., in their packaging or via mail-in offers).

Companies operating in the food, drug and medical device industries should also be mindful of the Bill as similar provisions may be seen in future amendments to the *Food and Drugs Act*. Amendments to the *Food and Drugs Act* were originally introduced at the same time as the first version of the Bill and may come forward again.

The Bill, if enacted, would reflect a sweeping change to Canadian consumer product safety law. Key points of the Bill include:

- Broad prohibition against the manufacture, importation, advertisement or sale of any consumer products that are a danger to human health or safety.
- Consumer products are broadly defined to include components, parts and accessories that would be obtained by an individual for non-commercial purposes.

This would arguably include products that are predominantly sold for commercial purposes, but which may also be sold to individuals for non-commercial purposes.

- The Minister of Health would be able to order a manufacturer, importer or retailer to recall consumer products that are a danger to human health or safety. If the Minister's orders are not followed, the Minister may carry out the recall at the expense of the party that failed to conduct the recall. A review of the recall, if requested, must be completed within 30 days (subject to an extension of the review period by the review officer).
- Incidents must be reported to the Minister of Health within *two days*. Incidents include occurrences in Canada or elsewhere that resulted, or may reasonably be expected to result, in an individual's death or in serious adverse effects on health.
- The Minister of Health may order manufacturers or importers of consumer products to conduct tests or studies and provide the results to the Minister.
- Manufacturers, importers, advertisers, sellers and testing organizations must maintain documents that would allow consumer products to be traced through the supply chain. Documents must be stored for six years at the organization's place of business in Canada (unless an exemption for storage outside of Canada has been obtained).
- Broad powers would allow the Minister of Health to disclose both personal information and confidential business information *without consent*.
- According to the preamble, the lack of full scientific certainty is not to be used as a reason for postponing measures to prevent serious or irreversible effects on human health. Also known as the precautionary principle, this standard may be applied by the courts in interpreting the legislation.
- Broad regulation-making powers would allow for regulations exempting, with or without conditions, a consumer product or class of consumer products from the application of the Act.

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- Contravention of the Act may result in significant fines and/or imprisonment, including, for certain offences, fines in an amount that is in the discretion of the court or imprisonment for a term of up to five years or both. Offences committed or continued on more than one day each constitute a separate offence.
- Administrative monetary penalties are available for contravention of recall orders.

It remains to be seen whether this Bill, unlike its predecessors, will become law. Perhaps in this case, the third time will be a charm. If it does become law, all those involved in the manufacture, importation, advertisement or sale of consumer products should carefully consider the impact the law may have on how they operate, as the costs of non-compliance may be significant.

For further information, please contact one of the following:

<u>Montréal</u>	<u>Marie-Hélène Constantin</u>	514-982-4031
<u>Toronto</u>	<u>Beth Gearing</u>	416-863-2597
	<u>Elizabeth McNaughton</u>	416-863-2556
	<u>Gord McKee</u>	416-863-3884
	<u>Alice Tseng</u>	416-863-3067
	<u>Laura Weinrib</u>	416-863-2765
	<u>Jennifer Smith</u>	416-863-4022
<u>Vancouver</u>	<u>David Neave</u>	604-631-3338

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