Sweeping “New” Proposed Consumer Product Safety Legislation

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On January 29, 2009, the federal government again proposed the Canada Consumer Product Safety Act (CCPSA), this time as Bill C-6. The CCPSA was first proposed by the Harper government in April 2008, following several high profile recalls and concerns about the health and safety risks of consumer products imported and/or sold in Canada. Bill C-52, as it was known then, died when the Canadian federal election was called in the fall of 2008. (For additional background information on Bill C-52, see our May 2008 Blakes Bulletin on Life Sciences, and our August 2008 Blakes Bulletin on International Trade.)

The proposed CCPSA, which is a key component of Canada’s new Food and Consumer Safety Action Plan, would replace Part I of the Hazardous Products Act. It would apply to all products, including components, parts or accessories and packaging, that can be reasonably obtained by an individual for non-commercial (including domestic, recreational and sports) purposes. Certain products currently regulated under specific legislation such as food, drugs, medical devices, natural health products, cosmetics, pest control products, vehicles and controlled substances are excluded from the CCPSA.

The current bill retains the key features that were introduced in Bill C-52, including:

• **General Prohibition:** introduces a general prohibition against the manufacture, importation, advertisement or sale of consumer products that pose an unreasonable danger to human health or safety;

• **Packaging/Labelling:** prohibits packaging, labelling or advertising that is false, misleading or deceptive, as it relates to health and safety;

• **Incident Reporting:** requires industry to report when they have knowledge of an “incident”, including a defect, recall, erroneous label information or occurrence that results or could result in serious injury or death, regardless of whether such occurrence or recall takes place in Canada or elsewhere. The Minister of Health must be notified within two days of the person becoming aware of the incident while a written report must be filed within seven days of the person becoming aware;

• **Mandatory Recalls:** gives inspectors the power to order mandatory recalls or other corrective measures where the inspector reasonably believes the product poses a danger to public health or safety;

• **Disclosure:** permits disclosure of confidential business information about a consumer product that is a serious and imminent danger to human health or safety or the environment;

• **Safety Tests:** provides the government with the authority to order commercial manufacturers and importers to conduct consumer product safety tests and provide the results of those tests;

• **Document Retention:** includes document preparation and maintenance requirements for all who manufacture, import, advertise, sell or test consumer products for commercial purposes, to facilitate product tracing through the supply chain, particularly in cases where a product has been recalled; and

• **Fines and Penalties:** strengthens compliance and enforcement activities through increased fines – up to C$5-million for some offences – and penalties and would create an administrative monetary penalty scheme with a lower civil standard of proof as an alternative to criminal prosecution.

While Bill C-6 closely resembles its predecessor bill, some of the language and concepts were strengthened or modified in response to input received from stakeholders and legislators. Two of the most notable differences between Bill C-52 and Bill C-6 are as follows:

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Amended definition of “danger to human health or safety”: To clarify the intent of the general prohibition and to acknowledge the inherent dangers of certain products (e.g., that knives are sharp), Bill C-6 amends the definition of “danger to human health or safety” to read: “any unreasonable hazard – existing or potential – that is posed by a consumer product during or as a result of its normal or foreseeable use and that may reasonably be expected to cause the death...or have an adverse effect on that individual’s health – including an injury...” [emphasis added]

Time-frame for review of inspectors’ orders: Under Bill C-52, a person subject to an inspector’s order could request that the order be reviewed. However, the bill did not specify when the review had to be completed. To address stakeholders’ concerns about the amount of time it would take to have an inspector’s order reviewed, Bill C-6 amends the wording to provide that a “review officer shall complete the review within a reasonable time” and the person who has requested the review is to be notified “without delay” of the reasons for the review officer’s decision. [emphasis added]

It is likely that Bill C-6 will undergo further amendments before it becomes law and may potentially die again if the current minority government should fall. While the full extent of the regulatory requirements will not be known until the legislation is passed and the regulations enacted, there is no doubt that Bill C-6 has the potential to significantly alter the regulatory landscape for anyone that manufactures, imports, packages, advertises or sells consumer products in Canada where those products are not exempt from the CCPSA.