



RICKETTS, HARRIS LLP
BARRISTERS & SOLICITORS

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THE CANADIAN CONSUMER PROTECTION SAFETY ACT (CCPSA)

WHAT POLICY COVERAGE WILL IT TRIGGER AND WHEN?





Why was it enacted?

High profile recalls in 2007 acted as catalyst

- Consumer protection legislation followed in U.S., Europe and China
- Canada followed suit, eventually
- CCPSA came into force yesterday

What is the CCPSA's purpose?

- Preamble: "protecting the public by addressing dangers to human health or safety that are posed by consumer products"
- "Danger" is used four times in the preamble
- "the growing number of consumer products that flow across the borders of an increasingly global marketplace make the realization of that objective a challenge"
- "individuals and suppliers of consumer products have an important role to play in addressing dangers to human health or safety that are posed by consumer products"
- To "encourage compliance" with regulatory system

Key powers under the CCPSA

- The Ministry of Health can:
- Order a recall of a consumer product
- Charge companies and/or their officers, directors, agents or employees
- Inspect a company and seize products and business records
- Order tests, at company's expense

Key duties imposed by the CCPSA

Must notify the Ministry of an "Incident" anywhere in world

- Maintain records
- Comply with specific regulations
- Comply with inspections, tests and orders

Insurance Policy Implications

- Products under higher scrutiny
- Class actions more likely if recall ordered
- The geographical reach of a policy

- Defence costs exposure if charges are laid

Recommendations

D&O Allocation clauses

- Clarify exclusions/ rescission rights
- Establish geographical reach of policy
- Require insured to demonstrate compliance with CCPSA

Sample language:

Insuring Agreement

Subject to the Limit of Insurance per "product withdrawal" ... we will reimburse those "product withdrawal expenses" ... provided that:

(a) The "product withdrawal" commences during the policy period"....

This insurance applies only if the "product withdrawal" is conducted by you or by others; and....

(2) takes place in the "coverage territory".

"Product Withdrawal Expenses" means those reasonable and necessary expenses listed below paid to accomplish a "product withdrawal" of "your product" and which would not have been paid had such "product withdrawal" not taken place.

expenses paid to prepare and issue broadcast, electronic, printed, telecast, and telephonic notices, announcements, and communications; and expenses paid to transport, ship, package, destroy, dispose, or store the withdrawn product(s)....

Exclusions:

This insurance does not apply to:

a "product withdrawal":...

(3) based upon or arising out of any dishonest, intentionally fraudulent, criminal, malicious or knowingly wrongful act or omission committed by or at the direction of any insured, including but not limited to, any violation of the laws and regulations of any government health authority or regulatory body establishing safety standards....

Exclusions:

This insurance does not apply to:....

b. costs or expenses of resultant litigation or proceedings, arising out of the violation of any government regulation in connection with the manufacture, sale, or distribution of any products...