

The Relationship Between Regulation and Litigation

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All products, consumer products such as electronics, clothes, food and beverage in particular, are increasingly frequent targets for product liability litigation. This trend is likely to continue given consumers' increased focus on both health and safety-related issues (both real and imagined) as well as the accuracy of the advertising claims made regarding the efficacy or quality of a product.

Accordingly, to minimize potential exposure to regulatory sanctions and potential product liability claims, companies seeking to sell their products in Canada need to consider the regulatory regime applicable to their products and ensure that their products meet all relevant standards before making them available to Canadian customers. While there are numerous federal laws governing product standards and marketing claims, in many cases, there are also separate provincial regulatory regimes that may apply, depending on the specific product. Some of the key federal product-related statutes include:

- **Canada Consumer Product Safety Act.** The CCPSA regulates the manufacture and import, advertising and sale of consumer products and includes a number of product-specific regulations (for example relating to baby products and clothing, textile flammability, and toys).
- **Competition Act.** The CA contains a broad range of provisions, but of particular relevance are the criminal and non-criminal provisions prohibiting misleading advertising.
- **Consumer Packaging and Labelling Act.** The CPLA governs the packaging and labelling of a broad range of products and sets out the mandatory label information.
- **Canada Agricultural Products Act (and Regulations).** The CAPA regulates agricultural practices and to the production, manufacture, composition, packaging, labelling, grading, marketing, storage, advertising, importation and exportation of food products.
- **Food and Drugs Act.** The FDA regulates the labelling, packaging, treating processing, sale or marketing of food, drug or medical device products and includes a number of product-specific regulations (for example relating to cosmetics, drugs, medical devices and natural health products).
- **Motor Vehicle Safety Act.** The MVSA regulates the manufacture, and importation of motor vehicles and motor vehicle-related equipment and includes regulations regarding standards for a broad range of vehicles.

In addition, there are number of product-specific federal regulatory regimes applicable to products including, aircraft, boats, hazardous products, fertilizers, pesticides, jewellery, explosives, alcohol and textiles, among others.

In addition to the federal regulatory regime, there are also several provincial regimes applicable to a wide range of products. The various provincial product regulatory regimes regarding standards for electrical products, environmental standards, food safety, fertilizers, pesticides, among others.

As the list of federal and provincial product-related laws discussed above illustrates, the Canadian regulatory landscape essential covers all products sold in Canada and in many cases, multiple regulatory regimes apply to a single product. Given the increased enforcement of these regimes, in particular those relating to health and safety and the accuracy of promotional claims, it is critical that companies operating in Canada ensure that they understand and comply with all regulations relevant to their products. This is especially so given that regulatory non-compliance often leads to related product liability claims.

While complying with the applicable regulations doesn't necessarily immunize a product from liability claims, non-compliance with regulations certainly increases both the risk of exposure to product liability claims and the related negative publicity these types of claims can have on the value of your brand.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.