

## Consumer Protection in Product Liability Claims

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While the standard of liability for product liability claims in Canada is negligence, there is a mix of federal, provincial, and territorial consumer protection laws, which could potentially give rise to additional causes of action. The following are some relevant areas under certain Canadian jurisdictions that may apply in a product liability claim.

- **Implied warranties.** The implied conditions and warranties under sale of goods legislation cannot be varied or excluded (e.g., implied conditions of fitness and merchantability).
- **Misrepresentations.** It is illegal to make false, misleading, deceptive or unconscionable representations. Some examples of these representations include:

o a representation that the goods are of a particular standard, grade, style or model, if they are not;

o using exaggeration, innuendo, or ambiguity regarding a material fact; or

o taking advantage of a consumer's ignorance, illiteracy, or disability.

- **No waiver of rights.** Any agreement or waiver of a consumer's substantive and procedural rights under consumer protection legislation is not enforceable.
- **Mandatory arbitration and class action waivers.** Mandatory arbitration provisions and class action waivers in consumer agreements are not enforceable.

Given that the consumer protection laws are not entirely harmonized, the laws of the applicable jurisdiction must be considered by manufacturers, suppliers, and others when engaging in a transaction with consumers that may give rise to product liability claims.

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