

Product Liability 101: What You Need To Know

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In Canada, all parties in the supply chain can be exposed to liability for a defective product including the manufacturers, importers, distributors and retailers. Product liability claims typically fall into one or more of the following three categories:

1. **Design defect.** The product, as designed, poses an unreasonable risk of harm to foreseeable users that could have been averted or mitigated through the use of an alternative design.
2. **Manufacturing defect.** The product was not manufactured in accordance with the applicable design or specifications. Though the product's design was safe, products are sometimes manufactured with dangerous flaws. Not all of the same product are necessarily dangerous in these cases — just those from a defective batch.
3. **Warning defect.** The manufacturer failed to warn product users of dangers it knew or ought to have known were associated with the foreseeable use of the product. This refers to cases in which a product did not come with proper safety warnings or instructions.

What Is The Standard Of Care?

A plaintiff must establish that the defendant owed it a duty of care, that the defendant breached the standard of care and that the plaintiff suffered damages that are linked to that breach.

Is There a Limitation Period for Product Liability Claims?

Depending on the province, limitation periods in Canada generally range from two to six years and are subject to the “discoverability” principle – in other words, when the plaintiff “discovered” that it had a potential claim.

What Types Of Damages Can Be Claimed For?

Damages for bodily injury and damage to property are recoverable. There is no limit on the quantum of damages recoverable from one manufacturer, with the exception of general damages for pain and suffering being capped at \$371,000. Punitive damages, the purpose of which is to deter a defendant from engaging in conduct similar to that which formed the basis of the claim, are recoverable but in rare cases.

What Does This Mean For Manufacturers?

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There is a proximate relationship between the purchaser of a product and the manufacturer of the product. In light of this, manufacturers should take reasonable steps to ensure that its products will not result in personal injury or property damage, at least within the scope of the product's foreseeable uses. In order to ensure that it has averted or at the very least, mitigated, any foreseeable claims, manufacturers should ensure that their products comply with the applicable legislation and regulatory regimes, and they should review their insurance coverage and limits with their respective insurance broker.

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