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## Report of the Consumer Product Safety Coalition

### *Bill C-6 - Canada Consumer Product Safety Act*

Bill C-6, also known as the *Canada Consumer Product Safety Act* (CCPSA), is proposed legislation that will help keep Canadian families safe from dangerous consumer products.

Bill C-6 was introduced by the Government of Canada on January 29, 2009. The proposed *Canada Consumer Product Safety Act* would replace Part I of the *Hazardous Products Act* and introduce a new regulatory regime. The purpose is to modernize and strengthen product safety laws by overhauling existing rules to further protect the health and safety of Canadians. It will continue to introduce necessary, concrete measures to make consumer products safer for Canadians and their children by prohibiting the manufacture and importation of unsafe products. Additionally, it will give the government the power to order recalls of unsafe products.

Although the Coalition applauds the overall intent of the proposed Bill, the Consumer Product Safety Coalition had commissioned a legal opinion to identify those aspects of Bill C-6 that are most likely to have an adverse impact on business including those that impose unrealistic and unreasonable operational burdens and risks.

Our recommendations for amendments to selected provisions to Bill C-6 follow:

#### **1. Definitions**

While not the subject of legal analysis, we identified two issues relating to the proposed definition of the key phrase “danger to human health or safety”. First, it does not specify what constitutes an “unreasonable hazard” making the definition difficult to apply. Second, there is no seriousness threshold for an “adverse effect on health and injury” which may result in the inclusion of many relatively benign but, strictly speaking, adverse effects.

#### **2. Reporting Timelines**

The time limits for providing both the first and second reports are, simply put, unachievable. With respect to the second, the content expectations are also unrealistic given the short amount of time companies have to gather information.

#### **3. Inclusion of a Reasonable Grounds/Belief Limitation on Government Powers and Orders**

The powers given the Minister under s. 12 and s. 20 need to be tempered by “reasonableness” limits. As currently drafted, the Minister must merely consider the order necessary to verify compliance or prevent non-compliance (s. 12) or undertake the activity or make the order for the purpose of verifying compliance or preventing non-compliance (s. 20). These orders have the potential to be invasive, time consuming and costly to business. The Act should be amended so there is an objective element to the test: “reasonable grounds to believe” and reasonable limits on the scope of any activity the company is ordered to undertake.

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### 3. ....Continued

Other federal product safety laws with similar inspection and enforcement powers include a requirement that the Minister or inspector have a reasonable belief that the legislation has been breached before such invasive actions may be ordered. Including a reasonableness threshold will ensure action is confined to situations where there is an actual risk to consumers.

The Minister should also be required to provide notice before an order is made – particularly with respect to orders requiring a company to stop or start the manufacture, importation, packaging, storing, advertising, selling, labeling, testing, or transporting of a product. There should be a prior notice requirement for recall orders made under s. 30 as well.

### 4. Search and Seizure Provisions Should Be Narrowed

The CCPSA should be amended to require an inspector to obtain a warrant before conducting search or seizure activity where the predominant purpose of same is to gather evidence of a breach of the CCPSA. For warrant-less searches, the inspector should be required to have reasonable grounds to believe that the search is necessary for the protection of the public. Seized items should be released within a specified time period unless proceedings are commenced.

### 5. Include Express and Enhanced Opportunities for Review of Orders

The CCPSA should have the following added procedural safeguards:

- an explicit mechanism for the review of “stop/start” orders, the detention of articles and conveyances, and orders requiring the removal/storage of articles at the owner’s expense;
- a process by which affected persons can seek recovery of seized items;
- regarding recall orders, an opportunity for an oral hearing to a panel of three review officers who have the power to suspend orders while the review is underway and an express right of appeal to the Federal Court of Canada;
- an explicit right to request the review of AMP’s by an independent tribunal or court. The new provision should expressly permit the tribunal or court to review the facts of the violation or the penalty imposed.

On a related “procedural safeguard” point, a person against whom a document is presented as evidence should have the right to cross-examine the author of the document.

### 6. Documentation requirements

The document requirements in s. 13 specify a time limit on the retention period. In addition “prescribed documents” should be limited to those reasonably needed to achieve a specifically-stated purpose (e.g. conformity with prescribed standards).





## 7. Confidential Business Information

Regarding the disclosure of confidential information to third parties (e.g. foreign regulators) (s. 16 and 17), businesses should be given advance notice at a minimum so they can make the first call to the other regulator or take emergency injunctive proceedings. Ideally consent would be required.

Application of access to information legislation should be expressly addressed. Ideally, the CCPSA would provide that CBI (as identified by the provider) will be treated as automatically falling within the exemption from disclosure provisions, forcing the information seeker to bring proceedings to gain access rather than forcing the company to justify the exemption.

## 8. Due Diligence Defences

The Act should make it clear that the defence of due diligence is available to organizations whose employees are charged with a knowledge-based offence (s. 38) and to directors, officers, agents and mandataries who may be prosecuted for directing, authorizing, assenting to, acquiescing in or participating in the commission of an offence (s. 39). Due diligence should also be an available defence under the AMP regime.

## 9. Offences

The maximum penalties should be reduced to be more consistent with the fines prescribed by other federal public safety legislation. There should also be a maximum fine for the commission of a knowledge-based offence.

### *The Consumer Product Safety Coalition:*

- Vaughn Crofford, President, Canadian Hardware and Housewares Manufacturing
- Sheila Edmondson, Executive Director, Canadian Toy Association
- Peter Moore, Executive Director, Canadian Gift and Tableware Association
- Larry Moore, Vice-President, Electro-Federation Canada
- Kevin Wong, Executive Director, Canadian Water Quality Association
- Mary Anderson, President, Canadian Association of Importers and Exporters Inc.
- Stephen Knapp, Executive Director, Canadian Copper and Brass Development Association
- Dennis Baldin, Vice President, Finance, Canadian Federation of Independent Business
- Ralph Suppa, President & General Manager, Canadian Institute of Plumbing & Heating
- Michael Dwyer, Executive Director, Juvenile Products Manufacturers Association
- Marion Axmith Vinyl, Director General, Council of Canada

