Consumer rights and protection across Canada's supply chain operations

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Consumer protection laws in Canada consist of a combination of federal, provincial, and territorial legal requirements that businesses must follow when contracting with consumers. Within supply chains, consumer protection issues can arise at various stages, including the manufacturing process, where companies must ensure product safety and compliance with regulatory standards. Businesses must also adhere to legal requirements related to product labelling, marketing, and advertising to provide accurate consumer disclosures, as well as labour standards.

This article provides a high-level overview of consumer protection considerations that arise in Canada's supply chain operations.

Safeguarding the Canadian consumer: Protection measures and the six important issues they address

1. Unfair practices

Unfair practices encompass actions that have the potential to mislead consumers, subject them to undue pressure to enter into a transaction, or exploit their vulnerabilities. This includes taking advantage of consumers due to factors such as disability, lack of knowledge, illiteracy, or inability to understand the language. False, misleading, or deceptive statements and sales practices pose a significant compliance risk for businesses throughout the supply chain, including manufacturers, distributors, and retailers.

For instance, at the federal level, the *Competition Act* prohibits false or misleading representations, including deceptive marketing practices and unsubstantiated performance claims about products or services. Businesses must ensure that any performance claims are based on adequate and proper testing before being advertised, as failure to do so may result in enforcement action by the Competition Bureau.

Additionally, the *Competition Act* regulates the use of testimonials and endorsements, requiring that they be truthful, not misleading, and supported by adequate evidence.

Businesses must ensure that any testimonials reflect genuine experiences, and are not fabricated, exaggerated, or otherwise deceptive.

Consumers are generally provided with a right of action against businesses who don't comply with applicable consumer protection laws. In addition, businesses that engage in misleading advertising or deceptive marketing practices may face regulatory penalties, including fines, administrative monetary penalties, and even criminal prosecution.

2. Product safety

A variety of Canadian laws require businesses to manufacture their products in a manner that ensures safety. The products must be designed and manufactured for safe use by consumers. Consumer protection laws require businesses not only to design and manufacture products in accordance with legal requirements, but also to conduct appropriate testing and quality control.

Unsafe products are subject to recall (either by the manufacturer or issued by the regulators) and other requirements. The *Canada Consumer Products Safety Act* (CCPSA) applies to most consumer products with prescribed exemptions, such as motor vehicles, food, drugs, and cosmetics whose safety requirements are prescribed by other legislation. Among other prohibitions, manufacturers, importers, and sellers of products that are a danger to the health or safety of consumers, or subject to a recall, must not manufacture, import, advertise, or sell such products, and they are required to report health and safety issues to Health Canada.

Businesses are required to comply with all applicable safety standards and must take proactive measures to prevent undue risks to consumers. As such, merely meeting applicable safety standards may not be sufficient. For example, in the province of Québec, courts have consistently held that even when a product complies with safety regulations, a manufacturer may still be liable if it has failed to adequately inform consumers of potential risks associated with its products.

Accordingly, businesses should ensure consumers receive clear and comprehensive warnings about any hazards related to the use of their products. Moreover, if new safety issues are discovered after the product is on the market, manufacturers (and, when applicable, distributors or retailers) are expected to take corrective action — such as issuing warnings, updates, or recalls — to inform past and future customers.

Where use of a product results in illness, injury, or other incident, consumers may commence action against the business and other parties within the supply chain. In addition to litigation risk, including consumer class actions, regulators may impose fines or administrative monetary penalties, or commence criminal or civil action.

3. Product labelling and packaging

Consumer protection laws require products to contain clear and accurate information about the product, and relevant instructions and warnings. Federally, the *Consumer Packaging and Labelling Act* (CPLA) imposes requirements for products regulated thereunder, including that labels incorporate mandatory disclosure statements about the product identity and net quantity. Packaging must be manufactured and displayed in a

manner that does not mislead consumers about the quantity or quality of the packaged product.

4. Language requirements

At the federal level, the CPLA's regulations require certain label information to appear in both of Canada's official languages, English and French. In Québec, the *Charter of the French Language* imposes additional requirements, mandating that all information on packaging, as well as any accompanying documents such as instruction manuals, be at least in French, with French being at least as prominent as any other language.

5. Warranties

Consumer protection laws and sale of goods laws (in the province of Québec, the *Civil Code of Québec*) provide implied conditions and warranties to consumers regarding the quality, fitness, and/or merchantability of products.

For example, in the province of Québec, products sold to consumers must be of acceptable quality, safe, and fit for the purposes for which products of that kind are ordinarily used. As such, products must function as intended and remain durable under normal use for a reasonable period of time, having regard to their price, the terms of the contract and the conditions of their use.

6. Planned obsolescence

Québec is the only province that has explicitly prohibited the commercialization of consumer products designed to become obsolete after a certain period. As a general rule, manufacturers are therefore prohibited from using techniques that intentionally shorten a product's normal lifespan.

Managing supply chain risks

To mitigate supply chain risks to consumer protection requirements in Canada, businesses can take several measures, including:

- Detailing every step of the supply chain within their operations, as well as their relationships with other parties, such as suppliers.
- Understanding their risk exposure in relation to business partners, and where their products and supplies originate or are otherwise sourced. Procedures should be implemented to appropriately vet suppliers and business partners.
- Ongoing monitoring and auditing of processes, labour practices, and the facilities used to manufacture and produce products.

Contact us

For more information on consumer protection considerations across Canada's supply chain environment, or to assess risk at any stage of your business operations, please reach out to the key contacts below or any member of BLG's Product Law Group.

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