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April 1-2, 2013 • National Harbor, MD

Don't Strike Out on the Biggest Legal Conference in the Sports & Fitness Industry

Visit www.sfia.org/lrms to Register Today
Legal Task Force Webinar:
Playing the Canadian Way
Differences Between Health Canada & CPSC
February 14, 2013 @ 2:00PM EST

SFIA Host: Jonathan Michaels, Director, Membership & Business Development, SFIA

Moderator:
• Mark Granger, SFIA Legal Task Force Chairman & Granger Legal Consulting

Expert Panelists:
• Peter Pliszka, Partner, Fasken Martineau DuMoulin LLP
• Valentino Tramonti, Supervisor, Consumer Product Safety of Health Canada
• Larry Weber, Director, Risk Management & Compliance, Bauer Hockey Corp.
MODERATOR:
Mark Granger
SFIA Legal Task Force Chairman
Granger Legal Consulting

Mark Granger has been working with and defending the Sports & Fitness Industry Association (formerly SGMA) since 1976. He recently founded Granger Legal Consulting, after retiring from Morrison Mahoney LLP in Boston. A graduate of Dickinson College and Boston University School of Law, Granger has extensive trial and regulatory experience in product liability and regulatory matters. Admitted to practice in Massachusetts and New York, he regularly represents manufacturers and distributors on matters before the CPSC, EPA and works with them on product safety strategies, product design, standards compliance, and warnings and instructions. For over two decades Granger has chaired the SFIA’s Legal Task Force. He is Counsel to the Hockey Equipment Certification Council, a Fellow of the ASTM, chair of the ASTM F08 Ice Hockey Committee and an officer of F08. He co-chairs the Legal Committee of the WFSGI and for his decades of defending product liability trials was elected to the Product Liability Advisory Council (PLAC). Mark and his wife Kathy now live in the beautiful Adirondack Mountains of Upstate NY- a base from which he regularly travels to clients all over the US, Canada and Europe.

Webinar Questions Email To
mgranger@mgrangerlaw.com
Peter Pliszka acts as trial and appellate counsel in a broad range of litigation matters in courts in Canada, including the Supreme Court of Canada, with a particular focus on product liability and class action litigation. Peter has substantial experience as defence counsel for manufacturing companies in private action and class action product liability proceedings.

In addition, Peter is one of Ontario’s most experienced counsel in product liability-related Coroner’s Inquest proceedings. Peter also regularly advises manufacturers, distributors, importers and retailers on regulatory requirements of various products, risk management issues and corrective actions including product warnings and recall.

Peter’s product liability experience covers the design, manufacture and operation of a wide range of products, including sports equipment, recreational products, medical devices, pharmaceuticals, food products, motor vehicles, home electronics equipment, power generators, aircraft, forklift truck mechanical braking systems, tractor-trailer wheel assemblies, fire-retardant fabrics, trains, elevators components, industrial machinery, industrial resins and cellular telephones.

Valentino Tramonti
Supervisor, Consumer Product Safety of Health Canada – Quebec Region

Valentino Tramonti is a Supervisor for the Consumer Product Safety of Health Canada (Quebec Region). He has over 20 years experience in the enforcement and administration of the Hazardous Products Act (HPA) and Regulations and more recently the Canada Consumer Product Safety Act (CCPSA) which replaced the HPA in June 2011. His responsibilities over the years have included carrying out inspections and taking appropriate enforcement actions (including voluntary removals, seizures, recalls) when necessary at various levels of trade (manufacturers, importers, distributors, retailers). Also, part of his duties included the investigation of complaints and incidents associated to consumer products as well as responding to requests for information and interpretations from industry with respect to the administration and enforcement of the Acts and regulations. He currently supervises a team of inspectors in their day-to-day activities (inspections, complaints investigations, recalls, etc).
Larry Weber is the Director of Risk Management & Compliance for Bauer Hockey Corp., based in St. Jerome, Quebec. He joined the company in 1996 and his current responsibilities include managing Bauer’s corporate insurance program, managing consumer claims involving injury, as well as being responsible for all aspects of Bauer’s compliance programs. He holds a Master’s Degree in Civil Engineering from McGill University in Montreal and is a licensed professional engineer.
1. Canada Consumer Product Safety Act (CCPSA) Overview
2. Scope of CCPSA
3. CPSA General Prohibition
4. Toys Regulations
5. Toy Definition
6. How Young/Old is a “Child”
7. Consequences of Differences
8. CCPSA New Authorities & Requirements
9. Industry Perspective
10. How to Navigate Through the Regulations
11. Q & A

QUESTIONS CAN BE SUBMITTED EMAILED TO:
mgranger@mgrangerlaw.com
Canada Consumer Product Safety Act

- In force June 20, 2011

- Purpose – s. 3: to protect the public by addressing or preventing dangers to human health on safety that are posed by consumer products in Canada.

- Turned Health Canada-Consumer Products Safety Division into “CPSC of the North”
“Consumer Product”: 
- A product including its components, accessories, and packaging
- Reasonably expected to be obtained by an individual
- For use by the individual for non-commercial purpose
Scope of CCPSA:

• Does not apply to all consumer products

• Principal exceptions are:
  • motor vehicles
  • drugs
  • medical devices
  • natural health products
  • cosmetics
  • foods

(see Schedule 1 for a complete list)
• s. 7 – general broad prohibition:
  • Prohibits the manufacturing or selling of a consumer product that is:
    • a danger to human health or safety
    • the subject of a recall; or
    • the subject of a measure required by an inspector’s order, but not carried out.

• s. 6 prohibits manufacturing or selling a consumer product that does not meet the regulations under CCPSA
Toys Regulations Under CCPSA:

• “Toy” defined:
  • A product
  • intended for use by a child
  • in learning or play
Toy Definition – Differences in Canada v. U.S.:

1. Canada: Sports equipment is **NOT** exempt from definition of “toy”

2. Canada: “Intended for use by a child” is **NOT** qualified by “primarily intended”

3. Canada: CCPSA and Toys Regulations do **NOT** limit “child” to an individual under 12 years, or any other specific age
How Old/Young is a “Child”?  
• CCPSA silent  
• Toys Regulations Silent  
• Canadian case law silent  
• Health Canada finally to the rescue!  
  – “Industry Guide to HC’s Safety Requirements for Children’s Toys, 2012”  
  – P. 3 – definition of a toy:  
  “Health Canada’s policy is to interpret the term toy as applying to toys intended for use by children under 14 years of age ...”
Consequences of these Canada-U.S. Differences:

- Some pieces of sports equipment that are not a “toy” in US might be a “toy” in Canada
- If a “toy” – Beware! Various strict regulatory requirements will apply
Consequences of Differences

Consequences (cont’d):

e.g. lead content:

• Surface coating materials of a “toy” (e.g. paint, varnish; and HC’s position – also decals and stickers) may not contain > 90 mg/kg of total lead

• Any part of a “toy”: if it contains lead (or other toxic substance), it is prohibited unless:
  (a) The toxic substance cannot be ingested, inhaled or absorbed through skin; or
  (b) Total quantity of substance not > 1% of “acute oral median lethal dose” or “acute dermal median lethal dose” ... ; or
  (c) The toxicity not > the limit stated in Schedule 2
e.g. lead content (cont’d)

• Toys Regs., s. 25 – need a scientist and a lab to determine if product complies or not

• Extra complication: no HC-prescribed test methodology or standards for determining s. 25(a) test
• Ability to order recall and other corrective measures.
• Record-keeping to allow traceability in the event of a recall.
• Mandatory reporting by industry “incidents” with their products (including near misses).
• Ability to require tests and studies to verify compliance or prevent non-compliance.
• Sharing/disclosure of information.
• Increased fines and penalties including an administrative monetary penalties scheme (AMPs).
• New “General Prohibition”.

Retailers are required to prepare and maintain documents that record:

A) The name and address of the person from whom the product was obtained
B) The period in which the product was sold and the location of sale.

All others (manufacturers, importers, etc) are required to prepare and maintain documents that record:

A) The name and address of the person from whom the product was obtained, or
B) To whom the product was sold, or both.

Persons are required to keep documents until the expiry of six years after the end of the year to which they relate, unless regulations specify another time period.
Mandatory Reporting is the requirement for Industry to report any incident related to a consumer product they supply as outlined in Section 14 of the CCPSA: *Duties in the Event of an Incident*.

**Intent of Section 14:**

- Provide better intelligence on the use of consumer products and the potential risks with respect to human health and safety, enabling early and proactive response to emerging hazards/trends; and
- respond where appropriate to consumer product health and safety incidents.

The requirements for mandatory reporting are framed by 3 primary questions:

1. What is a reportable incident?
2. When do I need to report the incident?
3. How do I report the incident?
Upon learning of an “event” that may involve a company’s product, it is expected that the company undertakes an evaluation to determine if it meets the requirement to be reported to Health Canada and if the product involved is a consumer product as defined in the legislation.

This determination is undertaken prior to timelines commencing for the mandatory incident reports.

The following questions can assist in the determination of a reportable incident:

- Is this a consumer product that I sell, manufacture or import (including its components, parts or accessories)?
- Is my product connected with the suspected incident?
- Does it meet the criteria of an incident in 14(1) (a-d)?
  - Section 14 (1)(a): Death or serious injury
  - Section 14 (1)(b): Defect
  - Section 14 (1)(c): Incorrect / Insufficient Information
  - Section 14 (1)(d): Recall or other measure in another jurisdiction
- Does it indicate an unreasonable hazard posed by the normal or foreseeable use of the product or the foreseeable misuse of the product.
What is a Reportable Incident?

**EVENT OCCURS**

Is this a consumer product that I manufacture, import or sell in Canada? Is the consumer product connected to the event?

**RELATE**

Does the event meet the criteria of an **INCIDENT**?

**INCIDENT**

Does the event indicate an unreasonable hazard posed by the normal or foreseeable use of the product or the foreseeable misuse of the product?

**NORMAL/FORESEEABLE**

Yes

**What is a Reportable Incident?**

- Death or serious adverse effects on health, including a serious injury (actual or near miss) 14(1)(a)
- Defect or characteristic that may result in serious adverse effects on health 14(1)(b)
- Incorrect or insufficient information on a label or package that may result in serious adverse effects on health 14(1)(c)
- Recall/measure in another jurisdiction for human health or safety 14(1)(d)

**When Do I Need to Report an Incident?**

**AWARE**

The incident must be reported to Health Canada and, if appropriate, to the person from whom I received the consumer product.

**14(2) – Incident Report**

Manufacturers, Importers and Sellers (retailers, distributors)

1 day

2 days

3 days

4 days

5 days

6 days

7 days

8 days

9 days

**14(3) – Written Report**

Manufacturers and Importers

Within 10 days
# Consumer Product Incident Report: Form for Industry

## Information about this report

<table>
<thead>
<tr>
<th>Case Number:</th>
<th>Submission Number:</th>
<th>Purpose of report:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>

- **Product Type:** [Dropdown]
- **Report Type:** *New*

**NOTE:** If you have received this report from a customer, you will find your information in area 6. If you want to report to Health Canada with no changes to the content of the report, go to section 6 and click the Confirmation Report button.

## Information about who is reporting

<table>
<thead>
<tr>
<th>Business Name (Full legal name - no abbreviations):</th>
<th></th>
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<tbody>
<tr>
<td>Address:</td>
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<tr>
<td>City:</td>
<td>Province / Region:</td>
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<tr>
<td>Country:</td>
<td>Postal Code:</td>
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<td>Who are you? *</td>
<td>Website:</td>
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<td>Email:</td>
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<td>Telephone:</td>
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7. No manufacturer or importer shall manufacture, import, advertise or sell a consumer product that
(a) is a danger to human health or safety;

Regulations

- Consumer Products Containing Lead (Contact with Mouth) Regulations
- Face Protectors for Ice Hockey and Box Lacrosse Players Regulations
- Ice Hockey Helmet Regulations
- Surface Coating Materials Regulations
- Toys Regulations
CCPSA Online Resources

• Visit: www.healthcanada.gc.ca/productsafety for online resources such as:
  
  • Mandatory Incident Reporting Guidance
  • Document Retention Guidance
  • Quick Reference Guide on the CCPSA

• To report an incident:
  www.healthcanada.gc.ca/reportaproduct

• CCPSA General Enquires: CCPSA-LCSPC@hc-sc.gc.ca
• US Law and CCPSA have some similarities and have resulted in synergies (e.g. – lead content in paints and surface coatings is now the same allowable limit in both countries).

• However, there are important differences (e.g. – hazardous substances, textile flammability, drawstrings)
How Do I Navigate?

• Get to know your local Health Canada office and don’t be afraid to ask questions.

• Locate good counsel.
Thank You To All of Our Speakers

Any Webinar Questions?
Email: mgranger@mgrangerlaw.com

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Larry Weber
Director, Risk Management & Compliance, Bauer Hockey Corp.
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www.sfia.org/nhtf

2013 Litigation & Risk Management Summit
April 1-2, 2013 • National Harbor, MD
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2013 SFIA/NFHS/NCAA H.S. & University Equipment Rules Conference
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2013 Industry Leaders Summit
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www.sfia.org/ils