Legislative Summary **LS-623E**

BILL C-6: AN ACT RESPECTING THE SAFETY OF CONSUMER PRODUCTS

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LEGISLATIVE HISTORY OF BILL C-6

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
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N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

Legislative history by Michel Bédard

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BILL C-6: AN ACT RESPECTING THE SAFETY OF CONSUMER PRODUCTS*

INTRODUCTION

Bill C-6, An Act respecting the safety of consumer products (the Canada Consumer Product Safety Act(1) or CCPSA) was introduced in the House of Commons by the Honourable Leona Aglukkaq, Minister of Health, on 29 January 2009. The bill is very similar to Bill C-52, An Act respecting the safety of consumer products, which was introduced in the House of Commons during the 2nd Session of the 39th Parliament. Bill C-52 had received second reading in the House of Commons and had been referred to the House of Commons Standing Committee on Health when it died on the *Order Paper* as a result of the dissolution of Parliament in anticipation of the 40th general election.

Bill C-6 is designed to repeal and replace Part I of the *Hazardous Products Act*,(2) creating a new system to regulate consumer products that pose, or might reasonably be expected to pose, a danger to human health and safety. The bill:

- prohibits the sale, manufacture, import and advertisement of certain listed products and provides for testing and evaluation of consumer products;
- makes it mandatory for manufacturers, importers, and sellers of consumer products to report dangerous incidents associated with these products to the Minister of Health;
- obliges manufacturers, importers and sellers of consumer products to report product or labelling defects that result, or might reasonably be expected to result, in death or serious adverse effects on health, including serious injury, to the Minister of Health;

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) See clause 1 of Bill C-6.

(2) R.S.C. 1985, c. H-3. See clause 69 of Bill C-6.

- requires manufacturers, importers and sellers of consumer products to report recalls of consumer products initiated by governments and government institutions in Canada or elsewhere to the Minister of Health;

- provides for the inspection and seizure of consumer products for the purpose of verifying compliance or non-compliance with the bill's provisions;

- empowers the federal government to institute interim and permanent recalls of products that pose, or might reasonably be expected to pose, a danger to human health or safety; and

- establishes both criminal and administrative penalties for those who violate the CCPSA or orders made under it.

BACKGROUND AND CONTEXT

The federal government's key legislation governing consumer product safety is the *Hazardous Products Act*, which was first enacted in 1969. Part I of this Act deals with consumer products that are either restricted through regulation or are prohibited from being advertised, sold or imported into Canada. Approximately 30 products and product categories (such as toys and certain chemicals) are regulated, and about 25 others are prohibited. Among the prohibited products are baby walkers, lawn darts with elongated tips, and products containing toxic substances (such as jequirity beans, which contain a toxin similar to ricin).(3) The manufacture, import and sale of products may also be regulated or controlled under other Acts.

At present, if a consumer product that is not regulated or prohibited poses a health or safety risk, it is up to industry to voluntarily issue and manage a product recall. The federal government's authority in this regard is limited to issuing a public warning and, in the event that it is deemed necessary, subsequently taking steps to regulate or prohibit the product under the *Hazardous Products Act*.

Given the age of the *Hazardous Products Act*, and the increasingly global nature of the marketplace for consumer goods and other products, it is perhaps not surprising that a decision was made to modernize Canada's approach to product safety. On 17 December 2007, Prime Minister Stephen Harper introduced the Food and Consumer Safety Action Plan,(4) and in Budget 2008 the federal government committed $113 million over two years to implement this

(3) Ricin is the toxin found in castor beans.

(4) An overview of the plan as initially proposed is available on the Government of Canada's Healthy Canadians Internet site, http://healthycanadians.ca/pr-rp/plan_e.html.

plan. The Food and Consumer Safety Action Plan was initiated in response to a rash of product recalls, involving items such as tainted pet food, spinach contaminated with *Escherichia coli*, contaminated toothpaste, and unsafe children's toys. According to media sources, there were approximately 90 product recalls in Canada in 2007, as compared to 32 in 2006.(5) There were 165 voluntary recalls of products in Canada in 2008, and there have been 27 voluntary recalls to date in 2009.(6)

During the 2nd Session of the 39th Parliament, the earlier version of the CCPSA, Bill C-52, was introduced with a companion bill, Bill C-51, An Act to amend the Food and Drugs Act and to make consequential amendments to other Acts.(7) The CCPSA and former Bill C-51 were both key components of the federal government's Food and Consumer Safety Action Plan. On 10 January 2008, the Government of Canada issued a discussion paper outlining the key aspects of its plan(8) and inviting Canadians to provide input. Health Canada and the Canadian Food Inspection Agency also hosted a technical consultation for key stakeholders on 24 January 2008 to obtain their views on more specific aspects of the plan.(9)

The CCPSA and former Bill C-51 represented what is essentially a three-pronged approach to food, health and consumer product safety. Under these proposed pieces of legislation, the federal government would become increasingly involved in providing safety guidelines for new products during their development stage.(10) It would also play a stronger role with respect to oversight by imposing increased record-keeping and reporting requirements on

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(5) CBC News, "Ottawa strengthens outdated product safety legislation," 8 April 2008, http://www.cbc.ca/health/story/2008/04/08/safety-bill.html.

(6) Health Canada, "Food and Product Recalls: Latest Product Recalls," http://healthycanadians.gc.ca/pr-rp/pr-rp_e.php.

(7) For an overview of the legislative provisions and scheme set out in Bill C-51, see Marlisa Tiedemann, *Bill C-51: An Act to amend the Food and Drugs Act and to make consequential amendments to other Acts*, LS-602E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 21 April 2008. Like the first version of the CCPSA, this bill died on the *Order Paper* when Parliament was dissolved in anticipation of the 40th general election.

(8) Health Canada, *Strengthening and Modernizing Canada's Safety System for Food, Health and Consumer Products: A Discussion Paper Outlining Canada's Food and Consumer Safety Action Plan*, 10 January 2008, http://healthycanadians.ca/pr-rp/dpaper-papier_e.html.

(9) Health Canada and Canadian Food Inspection Agency, *Report of the Food and Consumer Safety Action Plan Technical Consultation*, 24 January 2008, http://healthycanadians.ca/pr-rp/action-plan/2008-safety-securit-tech_e.html.

(10) Strengthened preventive measures imposed during product development are provided primarily in relation to food and health products, rather than consumer products, and thus were found primarily in Bill C-51 rather than the CCPSA.

those who manufacture, sell, import and advertise food, health and consumer products and by giving the Minister of Health and designated officials more power to inspect and test products, particularly once health and safety concerns in relation to products have been identified. Finally, the new legislation would allow the federal government to issue mandatory recall orders for unsafe food, health and consumer products once dangers associated with them have been identified; provide the federal government with broad authority to order manufacturers, sellers and importers of products to take corrective measures to improve product safety; and create a wide array of offences and penalties for those who violate the new rules. Having said this, although the CCPSA and Bill C-51 were both considered integral parts of the government's overall food, health and product safety strategy, it is currently unclear when or whether the government plans to re-introduce a new version of Bill C-51 in Parliament.

Bill C-6's most striking or significant features are the powers it provides to both the Minister of Health and designated officials to order recalls of consumer products, and the new penalty and compliance regime that it establishes for consumer products.

DESCRIPTION AND ANALYSIS

Bill C-6 contains a preamble and 72 clauses.

A. Preamble

The preamble provides some insight into the motivating factors behind Bill C-6 and the objectives it is designed to serve. Among these factors are the "growing number of consumer products that flow across the borders of an increasingly global marketplace" and the challenges posed by this increased flow with respect to the federal government's ability to protect the public from products that pose a danger to human health and safety. The preamble also points to the need for governments within Canada to share information regarding unsafe or dangerous consumer products, as well as the need for this sharing of information among Canadian and foreign governments and international organizations. It also refers to the "need to create a regulatory system regarding consumer products that is complementary to the regulatory system regarding the environment." This objective is particularly relevant with respect to the system of offences and administrative penalties established by Bill C-6, which resembles the system of offences and penalties in the *Canadian Environmental Protection Act, 1999*.[(11)]

(11) S.C. 1999, c. 33.

B. Interpretation and Purpose (Clauses 2 and 3)

Clause 2 defines several terms that are used throughout Bill C-6. The signal feature of the definitions highlighted below is their breadth.

To illustrate, "article" is defined in clause 2 of the bill to mean "(*a*) a consumer product; (*b*) anything used in the manufacturing, importation, packaging, storing, advertising, selling, labelling, testing or transportation of a consumer product; or (*c*) a document that is related to any of those activities or a consumer product." Similarly, "consumer product" is defined in clause 2 to include the components, parts, accessories and packaging of the product. All that is required for a product to be a "consumer product" is that it "may reasonably be expected to be obtained by an individual to be used for non-commercial purposes."

Another important term that is broadly defined in clause 2 is "danger to human health and safety." This term is defined to include any unreasonable existing and potential hazard posed by a consumer product during or resulting from normal or foreseeable product use, as long as the product may reasonably be expected to cause the death of an individual exposed to it or to have an adverse effect (including injury) on his or her health. The definition includes "chronic adverse effects," and it is irrelevant whether a death or adverse effect occurs immediately after exposure or some time later. The provisions of the CCPSA will still apply regardless of the time that has elapsed after exposure to the hazardous product.

Finally, the definition of "government" in this bill encompasses not only federal and provincial governments in Canada, but also federal Crown corporations, Aboriginal governments in Canada, foreign governments, and international organizations of states, such as the United Nations.

Clause 3 provides the bill's purpose, which is to "protect the public by addressing or preventing dangers to human health and safety" posed by consumer products. This clause expresses the federal government's constitutional authority to enact this bill. Because it has a "public protection" purpose, Bill C-6 likely falls under the ambit of section 91(27) of the *Constitution Act, 1867*,[(12)] the federal government's criminal law power.

(12) (U.K.), 30 & 31 Vict., c. 3.

C. Application (Clause 4)

Because “consumer product” is so broadly defined in clause 2 of Bill C-6, clause 4 operates to narrow the types of consumer products to which the bill applies, exempting certain types of products, listed in Schedule 1, from the bill’s application. For the most part, the types of consumer products exempted are those that are already regulated under other existing statutes such as the *Explosives Act*,[13] *Food and Drugs Act*,[14] *Canada Shipping Act, 2001*,[15] *Criminal Code*,[16] *Seeds Act*,[17] *Controlled Drugs and Substances Act*,[18] and so forth. A similar approach is taken in Part I of the *Hazardous Products Act*, although the list of types of consumer products to which that Act does not apply is much smaller.[19]

Clause 4(3) specifies that the bill does not apply to natural health products as defined in the *Natural Health Product Regulations* made under the *Food and Drugs Act*.

D. Prohibitions (Clauses 5 to 11)

Clause 5 of Bill C-6 prohibits the manufacture, import, advertisement and sale of certain consumer products, while clause 6 prohibits the manufacture, import, advertisement and sale of consumer products that do not meet regulatory requirements. Prohibited products are set out in Schedule 2 of bill. The products on this list include many of the same products that are currently banned from import, sale or advertisement in Canada under Part I of Schedule I of the *Hazardous Products Act*. With respect to the regulated products described in clause 6 of the bill, no regulations have yet been made under Bill C-6. Broad regulatory authority is, however, provided for in clause 36 of the bill.

Clause 7 of the bill prohibits manufacturers and importers from manufacturing, importing, advertising or selling consumer products that constitute a danger to human health or human safety; are subjects of recall or review orders made by inspectors or review officers under the statutory authority granted to them;[20] are subjects of a voluntary recall in Canada; or are

(13) R.S.C. 1985, c. E-17.

(14) R.S.C. 1985, c. F-27.

(15) S.C. 2001, c. 26.

(16) R.S.C. 1985, c. C-46.

(17) R.S.C. 1985, c. S-8.

(18) S.C. 1996, c. 19.

(19) See section 3 of the *Hazardous Products Act*.

(20) See clauses 30 and 34 of the CCPSA.

subject to inspectors' or review officers' orders to take certain measures in relation to the consumer products in question.(21) Clause 8 contains similar prohibitions for those who advertise and sell consumer products.

Clauses 9 and 10 of the bill prohibit the making of misleading claims on a consumer product's package or label, or when advertising or selling products (such that a product that represents a danger to human health and safety is likely to be perceived as innocuous) or with respect to a product's certification or compliance with safety standards.

Clause 11 prohibits the making of a false or misleading statement to the Minister of Health regarding any matter governed by the bill or the regulations made under it.

Persons may be convicted of offences for violating any of the above prohibitions, or for failing to comply with other provisions of the CCPSA and the regulations made under it.(22)

E. Testing, Record-keeping and Duties in the Event of an Incident (Clauses 12 to 14)

Clause 12 of Bill C-6 gives the Minister of Health the authority to order anyone who manufactures or imports a consumer product for commercial purposes to conduct tests and studies on the product, compile any information necessary to verify compliance or prevent non-compliance with the bill's provisions, and provide the Minister with documents containing test or study results at the time or in the manner specified by the Minister.

Clause 13 requires anyone who manufactures, imports, advertises, sells or tests consumer products to prepare and maintain records that would allow authorized officials to determine the provenance of a consumer product, as well as any other documents prescribed by regulation. Generally, persons will be required to keep these records at their Canadian place of business, unless the Minister exempts them from this requirement. Those who import consumer products must provide the Minister of Health with prescribed documents no later than the time of importation. **Records must be maintained either for six years or for any other prescribed period (clause 13(1.1)).**

One of the purposes behind the testing and record-keeping provisions outlined in clauses 12 and 13 is to make it easier for Health Canada to obtain information from manufacturers,

(21) See clauses 31 and 34 of the CCPSA.

(22) See clause 38 of the CCPSA.

importers and sellers of consumer products in the event of an "incident." An "incident" is defined in clause 14(1) of Bill C-6 to mean any

- occurrence involving a consumer product, whether in Canada or elsewhere (clause 14(1)(*a*));
- defect or characteristic of a consumer product (clause 14(1)(*b*)); or
- incorrect or insufficient information on a label or in instructions, or a lack of label or instructions (clause 14(1)(*c*))

that resulted, or may reasonably have been expected to result in an individual's death or to have had serious adverse effects on his or her health, including a serious injury.

A consumer product recall or measure initiated by a government[(23)] for human health and safety reasons is also considered to be an incident (clause 14(1)(*d*)).

Following an "incident" as defined in clause 14(1) of the bill, manufacturers, importers and sellers of consumer products must provide the Minister, and, if applicable, the person from whom they received the product, with all information in their control respecting the incident within two days after the day on which they become aware of it (clause 14(2)). In addition, manufacturers, if they carry on business in Canada, and importers, if the supplying manufacturer carries on business outside of Canada, are required to provide the Minister with a written report containing information about the incident, the product involved in the incident, other products that they manufacture or import that could be involved in a similar incident, and any measures they propose to be taken with respect to those products, within **ten** days after the day on which they become aware of the incident or within the period that the Minister specifies by written notice (clause 14(3)).

F. Disclosure of Information by the Minister (Clauses 15 to 17)

Clauses 15 to 17 give the Minister of Health the authority to disclose information to persons or governments that carry out functions relating to the protection of human health and safety, and, in the case of confidential business information, governments that carry out functions relating to protecting the environment as well, without the consent of the person to whom the information relates, in certain specified circumstances.

In the case of personal information, the Minister may disclose such information without consent if disclosure is necessary to address a serious danger to human health and safety

(23) As stated previously, "government" is broadly defined in clause 2 of the bill.

(clause 15). He or she may also disclose confidential business information[24] relating to a consumer product without consent or notification of the person concerned, if the person or government to whom the information is disclosed agrees, in writing, to maintain its confidentiality and to use the information solely to protect human health or safety or the environment (clause 16). In addition, confidential business information may be disclosed by the Minister without consent and in the absence of a confidentiality guarantee in the event that the product poses a serious and imminent danger to human health or safety or the environment**, if the disclosure of the information is essential to address the danger (clause 17(1)). In the case of a disclosure under clause 17(1), the Minister must notify the person to whose business or affairs the information relates no later than the next business day (clause 17(2)). Clause 17.1 confirms that the Minister may disclose to the public information about a danger to human health or safety posed by a consumer product.**

G. Inspectors and Their Powers (Clauses 18 to 34 and Clause 64)

Clauses 18 to 34 and clause 64 establish an inspection regime for consumer products to ensure compliance with Bill C-6's provisions. The inspection regime is similar to that established under Part III, sections 21 to 26, of the *Hazardous Products Act*; however, the regime set out in Bill C-6 provides inspectors with broader powers.[25]

1. Powers of Inspection

The Minister of Health must determine the number of inspectors required for the purpose of the administration and enforcement of the bill and the regulations (clause 18(1)), and is empowered to designate individuals as inspectors (clause 18**(2)**). These inspectors are required to carry proof that they are, in fact, inspectors when carrying out their duties under the bill, and to produce this proof on request (clause 18**(3)**). An inspector can enter any place, including a conveyance, for the purpose of verifying compliance or preventing non-compliance with the Act and regulations, as long as he or she does so at a reasonable time and

(24) Clause 2 of Bill C-6 defines "confidential business information" to be information that is not publicly available, when persons have taken steps to ensure that it remains so, and when the information has actual or potential economic value to the person or his or her competitors because it is not publicly available.

(25) The inspection regime found in Part III, sections 21 to 26 of the *Hazardous Products Act*, will presumably continue to apply to controlled products as defined in that Act in the event that Bill C-6 is enacted, but would no longer apply to prohibited and restricted products as defined in that Act.

has reasonable grounds to believe that a consumer product, or a document relating to that product, is manufactured, imported, packaged, stored, advertised, sold, labelled, tested or transported there (clause 20(1)). Once at the place, the inspector can do almost anything in relation to the product that one might associate with the word "inspect," including examining and testing the product, seizing or detaining it or the conveyance it is in, and making records, including photographs, of the product. He or she may also order the owner or person having possession of the product to restrict its movement for as long as is necessary to conduct the inspection (clause 20(2)), or order the owner or person in possession of a conveyance to stop the conveyance or move it to a place where the inspector can enter it (clause 20(3)).

After having seized the product, the inspector may also provide it to an analyst for testing or examination (clause 29(1)), after which the analyst may issue a certificate or report outlining the results of his or her examinations or tests (clause 29(2)). As in the case of inspectors, analysts are designated as such by the Minister of Health (clause 28).

2. Power to Enter Private Property

Inspectors do not require consent of the owner or warrants to enter private property to carry out their duties, unless the property they are entering is a dwelling-house, in which case the inspector is required to apply to a justice of the peace for a warrant, absent consent of the owner (clauses 20(4) and 21(1)). Before a justice of the peace will issue a warrant, he or she must be satisfied that the place is a dwelling-house, that entry is necessary for inspection, and that entry to the dwelling-house was refused, there are reasonable grounds to believe that it will be refused, or there are reasonable grounds to believe that consent to entry cannot be obtained from the occupant (clause 21(2)). Once the inspector has entered the property, the owner or person in charge of it is required to provide the inspector with "all reasonable assistance" in carrying out his or her duties (clause 20(5)). Giving false or misleading information to an inspector, or obstructing or hindering his or her duties is prohibited (clause 19).

When an inspector enters a dwelling-house after the issuance of a warrant for the purpose of carrying out his or her duties, he or she may not use force unless he or she is accompanied by a peace officer and the warrant authorizes the use of force (clause 21(3)).

3. Powers of Seizure and Forfeiture

When the inspector seizes anything for the purposes of carrying out his or her duties, persons are prohibited from removing, altering or interfering with the thing seized (clause 22). Inspectors may also, at the owner's expense, move the thing seized to another place,

on notice to the owner, or order the owner to do this (clause 23). The inspector must release the thing seized if he or she is satisfied that the Act and regulations have been complied with (clause 24).[26] A seized thing whose owner cannot be identified may become Crown property within 60 days after the seizure (clause 25(1)*(a)*). It may also be forfeited to the Crown if the owner or person entitled to possess it does not claim it within 60 days after being notified that it may be released (clause 25(1)*(b)*). At that time, the Crown can also choose to dispose of it at the owner or possessor's expense (clause 25(3)).

In the event that proceedings are instituted against someone for an offence in relation to the seized object, the object cannot be considered forfeited to the Crown unless or until the owner or possessor has been convicted of the offence (clause 25(2)). At that time, however, the Crown may order it forfeited to the Crown, and may also order it disposed of at the owner's expense (clause 26). An object may also be forfeited to the Crown with the consent of the owner (clause 27).

4. Power to Issue Orders

In addition to the broad powers described above, inspectors also have the power to issue recall orders (clause 30) and orders that require certain measures to be taken in relation to a consumer product (clause 31). Such orders are not considered statutory instruments under the *Statutory Instruments Act*[27] and, as a result, do not have to be published in the *Canada Gazette* or tabled in Parliament (clause 64).

In the case of recall orders, the inspector may make such an order only if he or she believes, on reasonable grounds, that the consumer product that is the subject of the order poses a danger to human health or safety. Recall orders may be made to manufacturers, importers and sellers of the product, and must be made in writing. The manufacturer, importer or seller to whom the order was made must then perform the recall. The written notice of the order must provide reasons for the recall and detail the time and manner in which the recall is to be carried out.

Orders to take measures may be made to manufacturers, importers, sellers and advertisers of consumer products. Such orders may be made only when the person concerned

(26) This is in contrast to the process outlined in Part III of the *Hazardous Products Act*, which currently applies to prohibited, restricted and controlled consumer products. Under the current process, when a product, material or substance is seized under that Act, its return is not automatic. However, a person may, within two months after the date of seizure, apply to have the product returned to him or her.

(27) R.S.C. 1985, C. S-22.

does not comply with a testing order made by the Minister[28] or an inspector's recall order, when the inspector has reasonable grounds to believe that the product is subject to voluntary recall by a manufacturer or importer, or when the inspector has reasonable grounds to believe that the CCPSA or regulations made under it have been contravened (clause 31(1)). An order to take measures must be made in writing, provide reasons for the ordered measures, and specify when and how they are to be carried out (clause 31(3)). As to what one can be ordered to do, the inspector may order the manufacturer, importer, seller or advertiser to take any measure necessary to remedy non-compliance with the Act, including a "stop order" to halt the manufacture, importation, packaging, storing, advertising, selling, labelling, testing or transportation of a consumer product (clause 31(2)). In addition, if a person fails to comply with a recall order or order to take measures, the inspector is authorized to carry out the order at the expense of the person against whom the order is made (clause 32).

5. Review of Inspector's Orders

Given the breadth of the order-making powers given to inspectors, the fact that Bill C-6 provides a challenge process for those against whom orders are made is not surprising. Such persons can apply in writing to have an order reviewed by a "review officer" designated by the Minister of Health (clauses 33 and 34(1)). The review officer must be someone other than the person who issued the original order, and the review can only be on grounds that involve questions of facts or of mixed law and fact (clause 34(1)). The written request for review must set out the grounds for the request, the evidence supporting the grounds, and the decision requested. Generally, it must be submitted to the Minister of Health within seven days after the inspector's order (clause 34(2)). Requests will be refused if the written request does not meet the CCPSA's requirements, or is frivolous, vexatious and not made in good faith (clause 34(3)), and the reviewing officer must provide the applicant with a written notice of the decision and reasons for refusal (clause 34(4)). While the review is taking place, the original order continues to apply (clause 34(6)). The review must be completed within a reasonable time (clause 34(7)). A review officer is empowered to confirm, amend, terminate or cancel an inspector's order, and, just as in the case of a refusal to review, must provide written notice of his or her decision to the applicant, along with reasons (see clauses 34(8) and (9)).

(28) See clause 12, described above.

H. Injunctions (Clause 35)

As the above clauses with respect to the powers of inspectors demonstrate, Bill C-6 has both a remedial and a preventive focus. This accords with the purpose of the legislation, which is to protect the public from harm. As part of its efforts to prevent harm, Bill C-6 empowers the Minister to apply to a court of competent jurisdiction for an injunction ordering a person to refrain from doing anything that may constitute or be directed toward the commission of an offence under the CCPSA. The court may also order a person to take action to prevent an offence under the CCPSA from being committed (clauses 35(1)(*a*) and (*b*)). The court will issue the injunction only if it is satisfied that a person has done, is about to do or is likely to do something that constitutes, or is directed toward the commission of, an offence under the Act (clause 35(1)). Generally, the Minister is required to give parties against whom the injunction is sought at least 48 hours' notice before bringing the application to the court. However, if the urgency of the situation is such that service of notice would not be in the public interest, the notice period may be done away with (clause 35(2)).

I. Regulations (Clause 36)

Bill C-6 gives the Governor in Council very wide powers to make regulations to carry out the purposes and provisions of the CCPSA. For example, the Governor in Council may make regulations exempting products, classes of products, persons, and classes of persons from the statute's provisions, add or delete consumer products found in the Schedules to the bill, specify the types of documents persons must provide to the Minister of Health, specify how inspectors, analysts, and review officers are to carry out their functions, and so on. The regulations may also incorporate documents such as technical specifications and test methods and procedures by reference (clause 36). The regulation-making power of the Governor in Council in Bill C-6 is broader and more specifically described than the power given to the Governor in Council under Part III of the *Hazardous Products Act*.[29]

Clause 36.1 pertains to the parliamentary scrutiny of regulations. Subject to the exceptions set out in clause 36.2, clause 36.1 requires the Minister to lay proposed regulations

(29) If Bill C-6 is enacted in its current form, Part III of the *Hazardous Products Act* will no longer apply to prohibited and restricted products as defined in that Act, because Part I of the *Hazardous Products Act* will have been repealed. Part III will still continue to apply to "controlled products" as defined in that Act.

before both houses of Parliament. Such regulations must be referred to the appropriate committee of each house. Once they have been laid before Parliament, the proposed regulations may not be passed before the earliest of the following deadlines has expired:

- **30 sitting days after the regulations have been laid before Parliament;**
- **90 calendar days after the regulations have been laid before Parliament; or**
- **the day after both committees have reported their findings.**

Clause 36.2 provides that regulations can be made without being laid before Parliament if the Minister is of the opinion either that the change to an existing regulation is immaterial or insubstantial, or that the regulation must be made immediately to protect the health or safety of any person. In such cases, the Minister must lay an explanatory statement before each house of Parliament.

J. Interim Orders (Clause 37)

Just as inspectors are able to make orders under the CCPSA, so too is the Minister of Health. His or her order-making authority is even broader than that of the inspector, as it may contain any provision that may be contained under a regulation made under the CCPSA. However, it is also more temporary in nature: the Minister's order is an interim order. In addition, the circumstances must be very serious before the Minister can issue such an order. The Minister may make an interim order only if he or she believes that immediate action is necessary to deal with a "significant danger" to human health or safety (clause 37(1)).

An interim order made by the Minister ceases to have effect on the earliest of the following dates: 14 days after it is made (unless approved by the Governor in Council); the date on which it is repealed; the day on which a regulation having the same effect as the interim order is made; or the date specified by the interim order. In all cases, an interim order's duration cannot exceed a year after the date on which it was made (clause 37(2)). In contrast to inspectors' orders or review orders, interim orders must also comply with most of the requirements of the *Statutory Instruments Act* (clause 37(3)), which means that they must be published in the *Canada Gazette*. They must also be tabled in Parliament (clauses 37(5) and (6)).

K. Offences (Clauses 38 to 45)

Bill C-6 establishes two offences for those who violate the CCPSA or the regulations made under them. The *Hazardous Products Act* also contains an offence for failure to comply with that Act and its regulations, but is much less complex than the offences created under the CCPSA.[30] In addition, the sentences available for CCPSA offences are much more severe than the sentences set out for the offence in the *Hazardous Products Act*.

Clause 38(1) makes it an offence to contravene any provision of the CCPSA other than sections 8,[31] 10,[32] 11[33] or 19,[34] a regulatory provision, or an order made under the Act. If found guilty under this section and proceedings are by indictment, a person could be sentenced to a fine of no more than $5 million, or to up to two years' imprisonment, or both. On summary conviction, the maximum sentence for a first offence is a fine of no more than $250,000, or up to six months' imprisonment, or both, and for a subsequent offence, a fine of no more than $500,000, or up to 18 months' imprisonment, or both. Due diligence is, however, a defence that can be raised for this offence, which means that if the person committing the offence can demonstrate that he or she exercised the level of judgment, care, prudence, or activity that a person would reasonably be expected to exercise to avoid committing the offence in question, he or she might be found not guilty under the Act (clause 38(2)).

If, however, the person contravenes sections 8, 10, 11 or 19 of the CCPSA, or commits the other acts described above knowingly or recklessly, he or she could receive a sentence of a fine, the amount of which is at the court's discretion, or a sentence of up to five years' imprisonment, or both, if proceedings are by indictment; on summary conviction, for a

(30) Section 28 of the *Hazardous Products Act* makes it an offence to fail to comply with the Act's provisions or the regulations made under it. If found guilty of this offence, one could face a sentence of a fine not exceeding $100,000, or six months' imprisonment, or both, on summary conviction, and a fine of $1 million dollars, or two years' imprisonment, or both, if proceedings are by indictment. Officers, directors and agents of corporations who directed or acquiesced to acts of others who committed the illegal activity can also be charged under section 28, and, if found guilty, convicted as if they had carried out the illegal acts themselves.

(31) Clause 8 prohibits the advertising or sale of consumer products that one knows are dangers to human health or safety or are subjects of recall orders, voluntary recalls, orders to take measures or review orders.

(32) Clause 10 prohibits advertising or selling a product that one knows is packaged or labelled in a false, misleading or deceptive manner.

(33) Clause 11 prohibits knowingly providing the Minister with false or misleading information in relation to a matter under the CCPSA or the regulations made under it.

(34) Clause 19 prohibits knowingly obstructing or hindering an inspector, or knowingly making false or misleading statements to an inspector who is carrying out his or her functions.

first offence, he or she could be sentenced to a fine of not more than $500,000, or up to 18 months' imprisonment, or both. For a subsequent offence, on summary conviction, the maximum sentence one can receive is a fine of not more than $1 million, or imprisonment of not more than two years, or both (clause 38(3)). The defence of due diligence is not available in these circumstances.

Bill C-6 also outlines some factors that the courts should consider when imposing sentences for these offences, including the harm or risk of harm caused by its commission and the vulnerability of those who use the product (clause 38(4)).

It is possible to charge and convict a corporation or a comparable entity for committing these offences. All that is required is to establish that the offence was committed by an employee, agent or mandatary of the person charged (clause 40). Directors, officers, agents and mandataries of corporations or entities can also be charged and convicted under this bill, as long as it can be proven that they directed, authorized, assented to, acquiesced to, or were parties to the offence (clause 39).

Most significantly, however, an offence committed under the Act, if committed or continued for more than one day, constitutes a separate offence for each day it was committed. It is therefore possible for persons to be sentenced to multiple fines or prison terms if they allow their illegal behaviour to continue under the CCPSA (clause 41).

Bill C-6 also contains provisions specifying where trials for these offences are to take place (clause 42), the two-year limitation period for summary conviction offences (clause 43), and admissibility of evidence (clause 44). Clause 45 provides that information provided to the Minister of Health by the person charged, pursuant to a written notice of the Minister under clause 12 of the bill (providing the Minister with information and test results), may not be used to incriminate the person in a proceeding under the CCPSA.

L. Administrative Monetary Penalties (Clauses 46 to 63 and 65 to 67)

Unlike the situation under the *Hazardous Product Act*, Bill C-6 does not merely establish offences for violations of the Act and regulations. It also establishes administrative monetary penalties for violators, similar to those established by the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for example. An administrative monetary penalty regime is a civil penalties system that creates regulatory offences. The goal of such a penalty regime is to secure compliance with the statute that contains them by the imposition of monetary penalties, without the Crown having to resort to a criminal standard of proof and court procedures to

demonstrate that the person has violated the Act, and without the person being subject to a criminal sentence for having committed the infraction. It gives the Crown a mechanism to deal with less serious violations of a statute in a less onerous way. When legislation contains both offences and administrative monetary penalties, as Bill C-6 does, the government can decide how it wants to proceed against those who do not comply with statutory or regulatory provisions. Proceeding in one way does, however, preclude proceeding in the other (clause 65).

Bill C-6 goes on to specify that due diligence and honest but mistaken belief are not available defences to those named in notices of violation (clause 56(1)). Those named can, however, avail themselves of other common law rules and principles of justice, to the extent that they are consistent with the CCPSA (clause 56(2)). The standard of proof is also different for the Crown, depending on whether a person has been charged with an offence or has been given a notice of violation. In the former circumstance, the Crown must prove in court that the person committed the offence beyond a reasonable doubt. In the case of a notice of violation, however, it is sufficient to establish a contravention on the balance of probabilities (clause 57). As with the provisions above governing offences, directors and officers of corporations or entities may be subjects of notices of violations if they directed, authorized, assented to, acquiesced to or were parties to the violations (clause 58). Corporations or entities may be subjects of such notices as well, in circumstances where the contraventions were committed by their employees, agents or mandataries (clause 59).

In terms of evidence, clause 62 of Bill C-6 provides that, in proceedings for violations or prosecution for offences, notices of violation are admissible without proof of the signature or official character of the person issuing the notice. Clause 66 provides that a document appearing to have been issued by the Minister of Health, certifying the day on which the acts or omissions become known to the Minister, is similarly admissible as evidence without proof of signature or official character, for both violation proceedings and offence prosecutions, and, absent evidence to the contrary, is proof that the Minister became aware of the acts or omissions on that day.

Clause 46 of Bill C-6 states that anyone who violates an inspector’s recall order or order to take measures commits a violation and is liable to a penalty established in accordance with the regulations. Clause 47(1) then gives the Governor in Council broad regulatory powers to establish different penalties or ranges of penalties for different infractions, classifying each violation as “minor,” “serious” or “very serious.” Presumably, different penalties or a different

range of penalties will be available depending on the classification of the violation. The maximum penalty for a violation will be $5,000 for a non-profit organization or person committing a violation for non-commercial purposes, and $25,000 for everyone else (clause 47(2)). No proceedings in respect to a violation may be commenced later than six months after the Minister becomes aware of the acts or omissions that constitute the alleged violation (clause 63).

1. How Administrative Monetary Penalties are Levied

Clause 48 empowers the Minister of Health to designate individuals or classes of individuals authorized to issue notices of violation, and to establish a short-form description of offences to be used in the notices they issue. Clause 49 outlines the information that must be contained in the notice, such as the person's name, the alleged violation, the penalty, how to pay, and, in applicable cases, the lesser amount that the person might have to pay if he or she pays on time. The notice must also contain the rights of the person, including the right to challenge the notice by asking the Minister of Health to review the acts or omissions allegedly constituting the violation (clause 49(2)). A person is deemed to have committed the violation if he pays the penalty or lesser amount, as the case may be, in the prescribed manner and at the time specified (clause 50(1)). As an alternative to payment, the person against whom the allegation was made may request the ministerial review referred to above (clause 50(2)(*b*)), or if the penalty is $5,000 or more, ask to enter into a compliance agreement with the Minister (clause 50(2)(*a*)). If a person does not pay, and does not either request ministerial review or enter into a compliance agreement with the Minister, he or she is deemed to have committed the violation in question (clause 50(3)).

2. Ministerial Review

In terms of the ministerial review, clause 53(1) states that, on completion of the requested review, the Minister of Health shall determine whether, in fact, a violation has been committed. If the Minister is satisfied that a violation was committed, but that the penalty amount was inappropriate, the Minister may alter the penalty and provide notice to the person concerned in writing (clauses 53(1) and (2)). The Minister must consider only written evidence and submissions during the review (clause 53(5)). If the Minister is satisfied that the violation was committed and that the original penalty was appropriate, or corrects the penalty and issues a new notice of penalty, then the person must pay the original or corrected penalty provided for in

the notice in the prescribed time and manner (clause 53(3)). Once this is done, the original proceedings under clause 49 are considered ended (clause 53(4)).

3. Compliance Agreements

The Minister may enter into a compliance agreement if the person concerned is eligible (i.e., if the penalty levied against him or her is $5,000 or more) and requests one (clause 51(1)). If the Minister chooses not to, however, then the person who made the request must pay the original penalty (clause 52(1)). If the penalty is paid in the manner and at the time prescribed, the proceedings originally commenced under the violation are considered ended (clause 52(2)). If the penalty is not paid, then the person is deemed to have committed the original violation (clause 52(3)).

If the Minister agrees to enter into a compliance agreement with a person, he or she is deemed to have violated the act in the manner specified in the original notice of violation (clause 51(2)). The Minister may include any terms and conditions he or she considers satisfactory in the agreement, including having the person provide security for his or her performance (clause 51(1)(*a*)), and reducing the original penalty or eliminating it altogether once the Minister is satisfied that the terms and conditions of the agreement have been met (clause 51(1)*(b)*).

If the Minister of Health is satisfied that the terms of the compliance agreement have been met, then violation proceedings under clause 49 are considered to be ended, and the security provided (if any) may be returned to the person who provided it (clause 51(3)). If the Minister is of the opinion that the person did not fulfill the terms of the agreement, the Minister will provide the person concerned with a default notice, indicating that the person must pay twice the amount originally levied against him or her and that his or her security, if any was provided, shall be forfeited to the Crown (clause 51(4)). The person cannot deduct any money he or she spent under the compliance agreement from the new penalty, and must pay the new penalty as specified (clause 51(5)*(a)*). If he or she does pay the new penalty, original proceedings under clause 49 are considered ended (clause 51(6)). Alternatively, the security forfeited to the Crown can be accepted in lieu of the penalty amount (clause 51(5)(*b*)). Such forfeiture also ends the proceedings originally commenced under clause 49.

4. Enforcement

In the event that a person does not pay the administrative monetary penalty levied against him or her under Bill C-6, does not pay an amount set forth in a compliance agreement or a notice of default, or does not pay expenses incurred for disposing of an item seized, the Crown can institute debt recovery proceedings against the person concerned (clause 54(1)). If there has been a default in the repayment of a debt owing the Crown, in whole or in part, the Minister of Health can issue a certificate to this effect, which may be filed in Federal Court. Once filed, it has the same effect as a judgment of that court (clause 55). No debt recovery proceedings may be instituted later than five years after the debt became payable (clause 54(2)). As is the case with offences, a violation that continues on more than one day constitutes a separate violation in respect of each day it is continued (clause 60). This allows the notices of violation, and the penalties levied under them, to pile up unless the person immediately ceases the acts or omissions that constitute the violation. If the person has been deemed to have committed the violations, anything seized in relation to them may be immediately forfeited to the Crown and may be disposed of at the expense of the owner or person entitled to possess it (clause 61). Finally, the Minister may also publish information about any contravention of the Act or regulations, or any violation of an inspector's recall order or order to take measures in order to encourage compliance with the CCPSA and the regulations made under it (clause 67).

M. Other provisions (Clauses 62 and 63)

Clause 63.1 requires that the Minister establish a committee to provide him or her with public advice on matters in connection with the administration of the bill, including the labelling of consumer products.

N. Consequential Amendments to the *Hazardous Products Act* (Clauses 68 to 71)

Bill C-6 makes consequential amendments to the *Hazardous Products Act* that are designed to account for the fact that the CCPSA, if enacted in its current form, will repeal Part I of the *Hazardous Products Act*. The changes are intended to ensure that there is no conflict between the operations of the *Hazardous Products Act* and the CCPSA, and that persons will be aware of which statute applies to their product.

O. Coming Into Force Information (Clause 72)

Bill C-6 comes into force on a day or days to be fixed by order of the Governor in Council.

COMMENTARY

Bill C-52, the first version of the CCPSA, was the subject of some commentary, but not as much as its companion bill, Bill C-51. As stated earlier in this summary, Bill C-51 was designed to deal with food and health product safety, as opposed to consumer product safety. With respect to the CCPSA, the *Report of the Food and Consumer Safety Action Plan Technical Consultation*,(35) which was released on 24 January 2008, reflected the views of key stakeholders on what the proposed consumer product safety legislation should contain. The stakeholders consulted were generally supportive of the approach taken by the federal government under the proposed bill, particularly the inclusion of administrative monetary penalties(36) and the potential to levy big fines against those who violate the legislation.(37) However, some stakeholders expressed concern that the CCPSA did not impose product testing on manufacturers, importers and sellers of consumer products as a condition of market entry. Instead, the proposed legislation allows the Minister of Health to order mandatory testing on suspicion of a health concern.(38)

According to media reports, while reaction to the bill has been generally favourable, some critics remain unconvinced that this legislation will make much difference with respect to consumer product safety. They point to the fact that the *Hazardous Products Act* already contains fines of up to $1 million for violating its provisions; however, those fines are rarely imposed.(39) Accordingly, some critics feel that stiffer penalties for offenders will be unlikely to deter them from manufacturing, importing or selling unsafe consumer products, unless the federal government changes its approach to enforcement. Critics have also said that

(35) Health Canada and Canadian Food Inspection Agency (2008).

(36) Ibid., p. 8.

(37) Ibid., p. 11.

(38) Ibid., p. 9.

(39) See, for example, Gloria Galloway, “Consumer Product Safety Act: Cutting corners on consumer safety will be costly,” *The Globe and Mail*, 9 April 2008, p. A7.

another key issue with respect to enforcement under the *Hazardous Products Act* has been that there are too few safety inspectors.(40) This is a resource issue that the new legislation does not fix. The Minister of Health has responded to these comments by indicating that new safety inspectors would be hired, but has not indicated how many.(41)

Critics have also indicated that, in their view, the federal government should impose more quality controls on consumer products before they are shipped to Canada. The Prime Minister has responded to the latter concern by stating that it is "unrealistic to assume that the government could test every product line"(42) and characterizing the new legislation as "a series of active prevention measures, targeted oversight and rapid response."(43)

When Bill C-6 was examined by the House of Commons Standing Committee on Health in May and June 2009, a number of witnesses raised issues related to chronic health risk labelling. To some extent, discussions focused on the lack of progress relating to the implementation of the Globally Harmonized System of Classification and Labelling of Chemicals (GHS), as well as the need to broaden the scope of the GHS to include a greater number of products and chemicals. Not all witnesses agreed that additional product safety labelling was warranted.

Two amendments proposed by witnesses during the Health Committee's study of the bill related to tobacco products. The Canadian Cancer Society proposed removing clause 4(2), which limits the application of the Act to tobacco products and ignition propensity, and adding tobacco products to Schedule 1 of Bill C-6, which lists consumer products to which Bill C-6 does not apply. It was suggested that this would allow for a regulation to be made at some point in the future that would require all or part of Bill C-6 to apply to tobacco products. The other amendment relating to tobacco products was put forward by the group Physicians for a Smoke-Free Canada, which recommended that the bill be amended so that the exemption for tobacco products is limited to products that were on the market as of the date Bill C-6 was introduced.

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(40) See, for example, Richard Brennan, "Critics urge more safety inspectors; Government unveils new consumer legislation, makes general promise of better enforcement," *Toronto Star*, 9 April 2008, p. A15; and Greg Weston, "Toying around: Are we being hoodwinked by new consumer safety measures?" *Edmonton Sun*, 10 April 2008, p. 11.

(41) Galloway (2008).

(42) Ibid.

(43) Ibid.

Other concerns raised by witnesses included the need to reduce the acceptable decibel level for children's toys, adding a provision relating to hoaxes, protecting confidential business information that has been released, and ensuring that adequate resources are available to support the enforcement of the bill.