

Product Liability & Safety 2025 (Canada)

AUTHORS



Sylvie Rodrigue



Grant Worden



Nicole Mantini



Anne Merminod



Alicja Puchta

This piece was first published by Chambers and Partners as the Canada chapter in the “Product Liability & Safety 2025” guide. You can [view the original piece here](#).

Product Safety

Product Safety Legal Framework

Product safety laws in Canada consist of a combination of federal, provincial, and territorial requirements governing the import, sale, labelling, and marketing of products. An overview of the operative legal framework is discussed below.

Overarching Federal Laws and Regulations

Product safety

The federal Canada Consumer Product Safety Act (CCPSA) regulates the manufacture, import, advertising, and sale of consumer products in Canada. Consumer products are broadly defined to include any product (including components, parts, accessories, and packaging) that could reasonably be expected to be obtained by an individual for non-commercial purposes, including domestic, recreational, and sports purposes. The CCPSA does not, however, apply to consumer products governed by certain other federal legislation (e.g., food, pharmaceuticals, natural health products, medical devices, cosmetics, pest control products, animal feed, seeds, fertilisers, explosives, firearms, ammunition, motor vehicles and their parts, aeroplanes, ships, and animals). These specific categories of products are subject to different statutes and regulations.

Under the CCPSA, manufacturing, importing, advertising, and selling consumer products that pose a danger to human health and safety is prohibited, as is packaging or labelling a consumer product in a manner that could reasonably be expected to create an erroneous impression regarding the safety of the product.

The Competition Act governs the marketing, advertising, and labelling of products and services offered in Canada. Under the Competition Act, false or misleading representations, including deceptive marketing practices and unsubstantiated performance claims about products or services, are prohibited. Claims relating to product performance or environmental benefits must be based on adequate and proper testing. Claims relating to the

benefits of a business activity must similarly be based on adequate and proper substantiation. In addition to avenues for regulatory enforcement, the Competition Act provides consumers with a right of action against businesses that do not comply with its provisions.

Industry-Specific Laws

A number of specific categories of products have their own legislative regimes.

Food, drugs, natural health products, and cosmetics

The Food and Drugs Act (FDA) is implemented through an extensive framework of regulations and supported by numerous regulatory guidelines and policies that govern the manufacture, sale, import, and labelling of pharmaceuticals, medical devices, natural health products, and cosmetics (including personal care products). The four main sets of regulations that may apply to products governed under the FDA are:

- the Food and Drug Regulations;
- the Medical Devices Regulations;
- the Natural Health Products Regulations; and
- the Cosmetic Regulations.

Whether a product is governed by the FDA and its regulations depends on whether it fits one of the following definitions.

- A “drug” includes any substance or mixture of substances manufactured, sold, or represented for use in:
 - diagnosing, treating, mitigating, or preventing disease, disorder or abnormal physical state, or any of their symptoms in humans or animals;
 - restoring, correcting or modifying organic functions in humans or animals; or
 - disinfection in premises in which food is manufactured, prepared or kept.
- A “device” means an instrument, apparatus, contrivance or other similar article, or an in vitro reagent, that is manufactured, sold or represented for use in:
 - diagnosing, treating, mitigating or preventing a disease, disorder or abnormal physical state, or any of their symptoms, in human beings or animals;
 - restoring, modifying or correcting the body structure of human beings or animals or the functioning of any part of the bodies of human beings or animals;
 - diagnosing pregnancy in human beings or animals;
 - caring for human beings or animals during pregnancy, or at or after the birth of the offspring, including caring for the offspring; or
 - preventing conception in human beings or animals.

- A “natural health product” is defined as a scheduled substance, a homeopathic medicine, or a traditional medicine, that is manufactured, sold or represented for use in:
 - the diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal physical state or its symptoms in humans;
 - restoring or correcting organic functions in humans; or
 - modifying organic functions in humans, such as modifying those functions in a manner that maintains or promotes health.
- A “cosmetic” is defined as any substance or mixture of substances manufactured, sold, or represented for use in cleaning, improving, or altering the complexion, skin, hair, or teeth. This includes a wide range of products such as creams, lotions, makeup, perfumes, shampoos, deodorants, toothpaste, and mouthwash.
- “Food” includes any article manufactured, sold or represented for use as food or drink for human beings, chewing gum, and any ingredient that may be mixed with food for any purpose.

The FDA and its regulations empower Health Canada, the federal regulator, to order mandatory recalls and changes to products; to stop the manufacture, import, packaging, storing, advertising, sale, labelling, testing, and/or transport of products; and to mandate any other measures necessary to remedy non-compliance with legislation.

The requirements set out by the FDA are complex and vary by product type, including the following.

- Foods:
 - labelling requirements, nutrition facts, and allergen declarations;
 - standards for product categories such as meat and poultry, dairy products, fresh fruits and vegetables, and novel foods;
 - guidelines on food additives, chemical contaminants, and packaging materials; and
 - requirements for medical foods and infant formulas.
- Pharmaceuticals:
 - standards for drug fabrication, packaging, labelling, testing, and storage;
 - requirements for clinical trials;
 - product safety requirements and requirements for pharmaceutical approval and marketing in Canada; and
 - requirements for post-market surveillance, pharmacovigilance, and adverse drug reaction reporting.
- Medical devices:
 - product safety and licensing requirements for medical devices;
 - mandatory incident reporting and recall procedures; and
 - complaint handling standards.

- Natural health products:
 - product licensing requirements;
 - manufacturing requirements;
 - labelling standards; and
 - safety requirements.
- Cosmetics:
 - labelling requirements and advertising;
 - notification of first sale;
 - safety requirements; and
 - restrictions on ingredients.

The Safe Food for Canadians Act mandates preventive controls, hazard analyses, import licences and traceability within the food supply chain. This is supported by inspections and recalls managed jointly by Health Canada and the Canadian Food Inspection Agency.

Transportation

The Motor Vehicle Safety Act (MVSA), the Railway Safety Act (RSA), the Transportation of Dangerous Goods Act (TDGA), and the Canadian Aviation Regulations (CAR) under the Aeronautics Act establish requirements for those operating in the transportation sector.

- The MVSA prescribes standards for the design, construction, and importation of vehicles, mandating compliance prior to their sale within Canada.
- The RSA imposes obligations on railway operators to maintain equipment and infrastructure.
- The TDGA regulates the classification, packaging, and transportation of hazardous materials.
- The Aeronautics Act, through the CAR, regulates aircraft, including aircraft maintenance and operation to ensure airworthiness and safety.

Toxic substances

The Canadian Environmental Protection Act (CEPA) sets out a framework for identifying, assessing, and managing risks associated with substances identified as toxic (including chemicals, polymers, and living organisms). Under CEPA, substances are evaluated to determine if they are toxic or capable of becoming toxic to the environment or human health. Toxic substances listed in Schedule 1 of CEPA are subject to regulations that may restrict their manufacture, use, release or disposal. CEPA also provides for risk assessments, pollution prevention planning, and the development of regulations or codes of practice to manage or eliminate risks from specific chemicals.

The Hazardous Products Act restricts or bans specific hazardous substances in products, especially those targeting children or vulnerable populations, while the Cosmetic Regulations prohibit or limit ingredients in personal care items that are considered to be toxic. The Food and Drugs Act and associated regulations further control the use of potentially toxic substances in food, drugs, and medical devices.

Children's safety

The Toys Regulations under the CCPSA set out a framework to protect children from choking, strangulation, toxic substances, and other physical and chemical hazards. Sharp points and edges, small parts, flammability, and the presence of hazardous chemicals such as lead or phthalates in children's products are regulated. The Electronic Toys

Regulations set out safety standards that apply to toy products that are operated with 120 volts or less electricity. The Cribs, Cradles and Bassinets Regulations mandate requirements governing structural integrity, spacing of slats, and secure locking mechanisms.

Pest control and agricultural products

Pest control products (including herbicides and pesticides) are regulated under the Pest Control Products Act (PCPA) and its regulations. Canada regulates agricultural products and associated products (including seeds, livestock, fertilisers, and animal products) through various acts and regulations, including the following.

- The Safe Foods for Canadians Act regulates the marketing of agricultural products in import, export, and interprovincial trade, and establishes national standards and grades, inspection and grading procedures. It also oversees the production, processing, handling and storage of meat and fish products.
- The Agricultural Products Marketing Act regulates the marketing of agricultural products in interprovincial and export trade.
- The Feeds Act regulates livestock feed manufactured, sold or imported into Canada to ensure its safety for livestock, humans, and the environment.
- The Fertilizers Act regulates the sale, import, and manufacture of fertilisers and supplements to ensure they are safe for humans, plants, animals, and the environment.
- The Health of Animals Act imposes requirements respecting the handling, transportation, and identification of livestock and other animals in Canada.

Wireless devices

Devices like cell phones, wireless routers, Bluetooth devices, and other radiofrequency-emitting equipment are governed by the Radiocommunication Act and Regulations through radio equipment and interference-causing equipment standards, procedures and technical guidelines for the safe operation of Canadian telecommunication and radiocommunication services.

Packaged products

The Consumer Packaging and Labelling Act regulates prepackaged consumer products, requiring that labels incorporate mandatory disclosure statements about the product identity, dealer and quantity. Labelling cannot mislead consumers about the quantity or quality of the prepackaged product.

Explosives, fireworks, ammunition, and firearms

The regulation of explosives, fireworks, and ammunition falls under the Explosives Act and regulations. This framework aims to ensure public safety and security by controlling the manufacture, sale, storage, transportation, import, and export of these items. A key component of this regulation is the authorisation of explosives, including fireworks and ammunition, and the licensing or certification of those involved in their handling.

The regulation of firearms falls under the Firearms Act, which sets out requirements for the licensing and registration of certain firearms, as well as prohibitions around others.

Provincial laws

The provincial authorities and Health Canada have overlapping jurisdiction in regulating consumer products. Provinces have overarching consumer protection legislation that governs the sale of goods and services, as well as consumer contracts, setting out requirements as to the contents of consumer contracts, and imposing statutory warranties and conditions associated with goods. Additionally, provinces may regulate issues related to more discrete products and sectors, such as:

- consumer goods (household products, toys);

- alcohol and cannabis point-of-sale matters;
- the purchase, maintenance or repair of motor vehicles;
- electrical safety;
- workplace products and equipment;
- building materials and construction products; and
- food service establishments.

Regulatory Authorities for Product Safety

Federal

Product safety regulation is primarily defined by statute. The primary federal regulator for product safety in a number of sectors is Health Canada, but sector-specific regulators also include Innovation, Science, and Economic Development Canada (ISED), Environment and Climate Change Canada (ECCC), Transport Canada, the Canadian Food Inspection Agency (CFIA), and Agriculture and Agri-Food Canada (AAFC).

- The Healthy Environments and Consumer Safety Branch of Health Canada, which is the department responsible for human health, administers the CCPSA to oversee the safety of a wide range of consumer products, including toys and household items. Health Canada sets safety standards, monitors products on the market, conducts inspections, implements product recalls when necessary, and frequently publishes product recalls and advisories on its websites, as well as guidance to businesses on how to comply with regulatory requirements.
- Health Canada also administers the FDA in regulating food products, pharmaceuticals, medical devices, natural health products, and cosmetics. The Health Products and Food Branch of Health Canada is mandated to manage the health-related risks and benefits of health products (including pharmaceutical, biological and radiopharmaceutical drugs, medical devices, and natural health products), food, and veterinary drugs. Regulation of controlled substances such as cannabis falls to Health Canada's Controlled Substances and Cannabis Branch.
- Regulation of pest control products under the Pest Control Products Act similarly falls under Health Canada's purview through its branch, the Pest Management Regulatory Agency.
- Health Canada administers CEPA in the regulation of toxic substances, sharing this jurisdiction with Environment and Climate Change Canada to regulate products containing hazardous substances and enforce laws related to environmental safety. The Healthy Environments and Consumer Safety Branch of Health Canada, in particular, focuses on regulating and managing chemicals, products of biotechnology, radiation, environmental contaminants, and workplace hazardous products.
- The Safe Food for Canadians Act is administered by the CFIA with support from Health Canada. The CFIA assists in regulating the inspection of food products, plants, and animals.
- Transport Canada is responsible for the safety regulation of motor vehicles and related equipment, working under the MVSA to set and enforce standards for vehicle safety, manufacturing, and recalls. Transport Canada also administers the TDGA.
- The AAFC is responsible for the federal regulation of agriculture, including policies governing the production, processing, and marketing of farm, food, and agri-based products under the Canada Agricultural Products Act and Agricultural Products Marketing Act.

- The Competition Bureau is an independent law enforcement agency that administers and enforces the Competition Act. The administration and enforcement of the Consumer Packaging and Labelling Act (CPLA) is the responsibility of the Competition Bureau for matters relating to non-food products, while the CFIA is responsible for food products.
- The ISED oversees the safety of consumer electronics and wireless devices under the Radiocommunication Act, with a focus on ensuring safety and compliance with technical, certification, and safety standards.
- Natural Resources Canada oversees the safety of products such as explosives and energy-using equipment, as well as fireworks and ammunition. Public Safety Canada is responsible for developing the legislative, policy, and regulatory requirements for the safe and legal use of firearms.

Provincial

Each province has its own set of agencies that oversee product safety. In addition to falling under federal legislation, the safety of consumer goods such as children's toys or household products may also be subject to further provincial oversight, particularly in retail settings or in matters related to public health.

Building materials and construction products are subject to provincial building codes, which are enforced by local municipal building departments under the guidance of provincial ministries. These authorities are responsible for certifying that building products meet safety standards before being allowed for use in construction projects.

Provincial ministries of health are often involved in the inspection and safety regulation of food service establishments, while ministries of labour or occupational health and safety authorities regulate workplace products and equipment. Provincial electrical safety authorities are responsible for approving and inspecting electrical devices, installations, and appliances.

In the automotive and transportation sectors, provincial authorities are responsible for enforcing safety standards for vehicles and related products. Departments of transportation in each province implement and monitor adherence to safety requirements for vehicles, tyres, and accessories.

Obligations to Commence Corrective Action

The duty to commence corrective action in Canada is typically triggered when a company becomes aware, or reasonably ought to have become aware, that a consumer product poses, or is likely to pose, a danger to human health or safety. Such awareness may arise from customer complaints, reports of injury, independent testing, internal quality controls, or notifications from regulatory authorities either within Canada or from other jurisdictions.

Once a risk is identified, manufacturers, importers, and sellers are required to assess the scope and severity of the hazard. Corrective action may encompass a range of responses, such as issuing warnings to consumers, modifying product instructions or labelling, repairing or replacing defective items, or conducting a voluntary or mandatory product recall. The chosen course of action must be proportional to the risk and designed to eliminate or reduce potential harm as effectively as possible.

Companies are expected to initiate voluntary recalls if they identify a product safety risk. For consumer products and products falling under the FDA, recalls are typically co-ordinated with Health Canada to ensure appropriate consumer notification and remedy. Health Canada retains the authority to order a mandatory recall if a company fails to act voluntarily or if the voluntary action is deemed inadequate to protect public safety.

Obligations to Notify Regulatory Authorities

The notification requirements concerning potential product safety issues are imposed by several statutes and corresponding regulations, and they vary depending on the legislative regime.

For example, the CCPSA requires manufacturers, importers, and sellers of consumer products to report incidents involving those products (whether they occurred in Canada or elsewhere). Incidents include serious adverse health effects, deaths, product defects, malfunctions, incorrect/incomplete labels or warnings, or recalls. Notification must be without delay, typically within two days of identifying the risk, and must include relevant details about the product, the nature of the hazard, and the actions being taken to mitigate harm.

When Health Canada becomes aware of a potential product safety breach—whether through consumer complaints, reports from other jurisdictions, or company self-reporting—it may launch an investigation. This can include inspecting products, company records, and manufacturing facilities.

Penalties for Breach of Product Safety Obligations

Civil Penalties

Civil penalties depend on the legislative regime at issue. For example, under the CCPSA, these can take several forms, including the following.

- Administrative monetary penalties (AMPs): fines imposed for contravention of the CCPSA or its regulations. The exact amount varies depending on the nature and severity of the violation.
- Recall orders: companies may be ordered to recall products, notify the public, or offer replacements or refunds. Failure to comply with recall orders can result in additional penalties.
- Orders to take corrective actions: these may include ceasing the sale or distribution of a product, modifying a product, or changing labelling and packaging.

When assessing the appropriate civil penalties, regulatory authorities typically consider a range of factors (which can vary with the specific product type and legislation at issue). These factors often include:

- the severity and potential impact of the safety breach;
- whether the breach was intentional, reckless, or negligent;
- the company's history of compliance or non-compliance;
- steps taken to mitigate harm or co-operate with the authorities; and
- the financial benefit gained from non-compliance.

Penalties are intended to be proportionate to the risk posed by the product and the conduct of the party responsible.

Civil remedies under the FDA are similar to those under the CCPSA.

Criminal Penalties Under the CCPSA

Criminal penalties similarly depend on the legislative regime at hand. Most breaches under the CCPSA are handled with civil penalties, resulting in monetary penalties or remedial orders. However, the CCPSA outlines a range of criminal offences, including:

- knowingly manufacturing, importing, advertising, or selling a product that poses an unreasonable danger to human health or safety;
- failing to report incidents or provide required documents; and
- obstructing or hindering an inspector or making false or misleading statements to authorities.

Section 41 of the CCPSA establishes specific penalties for such offences.

- On summary conviction: fines up to CAD5,000 and/or imprisonment for up to six months for a first offence.
- On indictment: fines up to CAD5 million and/or imprisonment for up to two years for a first offence.
- For subsequent offences, the fines and/or imprisonment terms can increase.

The FDA makes it an offence to sell unsafe or adulterated food, drugs, or cosmetics. Penalties for breaches can include the following.

- On summary conviction: fines up to CAD5,000 and/or imprisonment for up to six months.
- On indictment: fines up to CAD250,000 and/or imprisonment for up to three years.

Provincial Penalties

While the federal government provides the main oversight for consumer product safety, provinces can impose additional requirements for products regulated in their legislative portfolios. Provincial authorities may have their own inspection and enforcement regimes and can issue their own penalties for breaches under provincial law.

Product Liability

Product Liability Causes of Action and Sources of Law

In Canada, product liability claims typically arise as breaches of contract or negligence. In common law provinces, sources of law include provincial sale of goods and consumer protection statutes, federal statutes like the Competition Act or the Food and Drugs Act, and common law. In Quebec, a French-speaking civil law province, product claims are governed by the Civil Code of Québec and the Consumer Protection Act.

Breach of Contract

A manufacturer may be held liable for breach of warranty or conditions in a sales contract, including statutorily implied conditions. Unlike in a negligence claim, a plaintiff is not required to demonstrate that the product was defective or that the defendant breached a duty to exercise reasonable care, but typically a consumer contract or transaction is required to ground these types of claims.

- Breach of warranty: a warranty is a legally binding assurance provided by the seller to the buyer regarding the quality, condition, or functionality of the goods or services sold. In common law provinces, if an existing warranty is not fulfilled, a consumer may bring a breach of warranty claim seeking the payment of damages.
- Breach of condition: a condition is a fundamental term that must be fulfilled for the contract to become binding or for the parties' obligations to take effect. If a condition is not satisfied or waived by the relevant party within the stipulated timeframe, the contract may be rendered void or unenforceable, and the parties may be released from their obligations without penalty.

Sales of Goods Legislation in Common Law Provinces

Provincial sales of goods legislation implies certain conditions into sales contracts, such as fitness for purpose and merchantable quality.

- Fitness for purpose: if the buyer expressly or by implication makes known to the seller the particular purpose for which goods are required, there is an implied condition that the goods will be fit for that purpose, provided it is reasonable for the buyer to rely on the seller's skill or judgement.

- Merchantable quality: when goods are bought by description from a seller who deals in goods of that description, they must be of merchantable (ie, saleable and usable) quality, unless the buyer has examined the goods and the examination ought to have revealed the defect.

Exclusion clauses limiting or excluding a party's liability for implied conditions or warranties may be available as a defence in contracts between commercial parties, depending on the province. However, provincial consumer protection legislation typically prevents the exclusion of implied conditions or warranties if the contract involves a consumer sale.

Sales of Goods Under the Civil Code of Québec and the Québec Consumer Protection Act

The Civil Code of Québec governs the sale of goods in Quebec and applies to all parties in the distribution chain (e.g., manufacturers, distributors, retailers, etc). Privity of contract is not required.

The Civil Code provides a warranty against latent defects that would render a product unfit for the use for which it was intended, or that would so diminish its usefulness that the buyer would not have bought it (or would have paid a lower price) had they been aware of the defect. A defect is considered "latent" if it is not apparent upon ordinary inspection and could not have been discovered by a prudent and diligent buyer. When a latent defect is identified in a sold good, the Civil Code presumes that the defect existed at the time of sale if it becomes apparent within a short period after delivery. This presumption shifts the burden of proof onto the seller, who must demonstrate either that the defect arose after the sale or resulted from improper use by the buyer.

The Consumer Protection Act also includes a warranty against latent defects, allowing consumers to seek recourse from either the merchant or the manufacturer, unless the defect could have been discovered through an ordinary inspection. The burden of proving that the defect was discoverable lies with the merchant or manufacturer. Once this warranty is triggered, it creates a presumption similar to that found in the Civil Code: merchants and manufacturers are presumed to have had knowledge of the defect.

Similarly, the Consumer Protection Act introduces various legal warranties of public order, under which merchants are bound to offer goods (i) that are fit for the purposes for which goods of that kind are ordinarily used; and (ii) durable in normal use for a reasonable period of time. What constitutes normal use and a reasonable period of time is determined based on the good's price, the terms of the contract, and the conditions of use of the good.

In the event of a breach, available remedies include rescission of the sale, reduction of the sale price, damages, and specific performance.

In 2023, the Quebec government also became the first Canadian jurisdiction to introduce provisions preventing the sale of goods for which obsolescence is planned, defined as techniques aimed at reducing a good's normal operating life. The Consumer Protection Act was amended to notably include this general prohibition, along with a new warranty of good working order. This warranty sets a minimum period during which certain commonly purchased goods—such as refrigerators, dishwashers, computers, mobile phones, and air conditioners—are expected to function properly. In Quebec, a new warranty of good working order is coming into effect on October 5, 2026. Businesses who sell or manufacture certain commonly used goods in Quebec (e.g., computers, cell phones, etc.) will be subject to a new warranty of good working order varying between three and six years. Businesses will have one year to implement the necessary changes to their practices to avoid monetary administrative penalties and fines.

Negligence

Product liability claims against manufacturers are often framed in negligence, as no privity of contract is required. To establish negligence, a plaintiff must prove: (i) the manufacturer owed them a duty of care; (ii) the duty was breached; and (iii) the breach caused damages. Canadian courts generally accept that manufacturers owe a duty of care to users of their products. Product liability claims in Canada have the following four established categories.

- Failure to warn: manufacturers have a duty to provide warnings about inherent risks that the manufacturer knows or ought to know about that are associated with the normal or foreseeable use of their goods. This duty extends not only to the time of sale but also to any new post-sale risks that are discovered. Warnings must be clear, specific, and sufficiently prominent.

- Negligent design: manufacturers have a duty to make a product reasonably safe for its intended use. Liability may arise when a plaintiff demonstrates that the foreseeable risks of the product's design outweigh its utility, and that no safer and more economically feasible ways to manufacture the product exist.
- Negligent manufacture: manufacturers have a duty of care to consumers to ensure that there are no defects in manufacturing that are likely to give rise to injury in the ordinary course of use. Unlike failure-to-warn or negligent design claims, manufacturing negligence claims typically relate to isolated lapses during production—for example, the use of incorrect materials, improper assembly, contamination, or other mistakes that deviate from the original product specifications or design. Manufacturing negligence claims do not require proof that the entire line of products is dangerous; it is sufficient to show that the particular item involved in the incident was deficient due to a flaw in its manufacture.
- Repairing a dangerous product: manufacturers have a duty of care to compensate consumers for the cost of repairing a dangerous product, but only if the product presents a real and substantial danger of physical injury or damage to property.

In Quebec, the Civil Code creates an extracontractual right against all parties in the distribution chain (e.g., manufacturers, distributors, retailers, etc) when third parties are injured as a result of a good with a safety defect. The Civil Code provides that a safety defect exists when “it does not afford the safety which a person is normally entitled to expect”. This includes when a product is affected by a manufacturing design or where it lacks adequate warnings about the risks and dangers it may pose. Once a safety defect is proved, the law presumes that all parties in the distribution chain were aware of it. However, this presumption can be rebutted by showing that the injured party (i) knew or could have known about the defect, (ii) could have foreseen the harm, or (iii) that, based on the state of knowledge at the time the product was made, distributed, or sold, the defect could not reasonably have been known.

False or Misleading Representations

Negligent or fraudulent misrepresentation may overlap with product liability claims in contract or negligence in cases where a manufacturer, distributor or retailer makes exaggerated or false claims about a product's safety, performance or features.

Additionally, the federal Competition Act prohibits false or misleading representations made to the public about a product's safety, performance or characteristics that are not substantiated or are intentionally deceptive. If a company knowingly or negligently misleads consumers regarding a product's safety and this misrepresentation leads to consumer harm, the Competition Act provides a statutory cause of action for recovering damages caused by the false representation. Many provincial consumer protection statutes contain similar provisions providing for statutory causes of action for damages arising from false, misleading or deceptive representations. The Competition Bureau has also recently published finalized guidelines on the anti-greenwashing provisions of the Competition Act, confirming that the Bureau is focused on marketing and other promotional representations.

In Quebec, there is a growing trend in product liability class actions to rely on the Consumer Protection Act rather than alleging the existence of a safety defect. Plaintiffs increasingly allege that manufacturers concealed or misrepresented the risks or dangers associated with a product, allowing them to circumvent the need to establish causation and avoid the burden of producing complex scientific evidence, as the evidentiary threshold under the Consumer Protection Act is significantly lower. Moreover, since proof of individual reliance is not required at the authorisation stage, more class actions are proceeding to trial, where defendants can assert a broader range of defences.

Damages

Damages in product liability claims in negligence are pecuniary (economic impact) and non-pecuniary (general) in nature. The aim of pecuniary and non-pecuniary damages is to restore the injured party, as far as is monetarily possible, to the position they would have occupied had the negligent act or breach not occurred.

Pecuniary damages address quantifiable financial losses, such as medical expenses, loss of income, costs associated with future care, and property damage. Non-pecuniary damages are awarded for things like pain and suffering, loss of enjoyment of life, and emotional distress. In 1978, the Supreme Court of Canada capped non-pecuniary damages at

CAD100,000 indexed to inflation (capped at CAD460,000 as of July 2025).

Punitive damages are available in Canada but are awarded only in rare and exceptional circumstances. The threshold for awarding punitive damages is high: a defendant's behaviour must represent a marked departure from ordinary standards of decent conduct. Any award must be rational and proportionate to the harm done, the degree of misconduct, and the need for deterrence. In rare cases where punitive damages are awarded, the amounts are very modest compared to awards in other jurisdictions like the United States.

In Quebec, punitive damages can only be awarded when provided by law, which includes product liability claims, notably brought under the Consumer Protection Act, or the Quebec Charter.

Standing to Bring Product Liability Claims

Canadian courts take a pragmatic approach to standing, focusing on whether the party bringing the claim has a genuine interest in the outcome and has suffered genuine harm attributable to the product. This includes consumers who purchased and used a product, as well as third parties who may have been injured by a product's defect despite not being the direct purchaser. In certain circumstances, family members or legal representatives may also have statutory standing to pursue claims on behalf of individuals who are incapacitated or deceased due to the product in question.

Class actions are commonly used in Canadian product liability litigation, allowing groups of similarly affected individuals to collectively seek relief when they share common issues of fact or law against the same defendant(s).

Time Limits for Product Liability Claims

Limitation periods are established by provincial or territorial legislation. Generally, the applicable limitation period for product liability actions ranges from two to three years from the date when the claim was discovered (or ought reasonably to have been discovered), but this can vary depending on the jurisdiction and the specific circumstances.

In most provinces, limitation statutes employ a "discoverability" principle, which provides that the limitation period does not begin to run until the plaintiff knew, or ought reasonably to have known, that they had suffered harm; that the harm was caused by the defendant's actions or omissions; and that a legal proceeding would be an appropriate means to seek a remedy.

Limitation periods may be suspended or "tolled" if the claimant is a minor, lacks legal capacity, or if the defendant wilfully concealed the defect or the injury. A proposed class action may also toll limitation periods in some provinces. In such cases, the limitation period may not run until the incapacity or concealment ends, or the class action is dismissed.

Jurisdictional Requirements for Product Liability Claims

Canadian courts are divided into federal and provincial courts, with provincial superior courts possessing broad jurisdiction over civil matters, including product liability claims. In contrast, the Federal Court of Canada has limited jurisdiction, typically only hearing matters explicitly assigned to it by statute, (e.g., administrative law, Aboriginal law, competition law, maritime and admiralty law, intellectual property, national security, and immigration law). As a result, most product liability claims are brought in provincial superior courts, unless the case involves a specific federal statute or party such as the federal government.

For each named defendant (including foreign corporations, even if they are related to a Canadian corporation), a plaintiff must ground jurisdiction in a "real and substantial connection" between the forum and either the defendant or the subject matter of the litigation. The Supreme Court of Canada has provided a non-exhaustive list of presumptive connecting factors, such as whether the defendant is domiciled or resident in the province or carries on business there; whether the tort was committed in the province; or whether a contract related to the dispute was

made there. Jurisdiction for a parent, subsidiary or affiliated company will not be established on that basis alone: the plaintiff must show each corporate defendant has a real and substantial connection to the dispute and forum at issue. The Civil Code specifically lists connecting factors granting Quebec jurisdiction over product liability claims, including, in addition to the above factors established by the Supreme Court of Canada, whether an injury was suffered in Quebec.

Pre-Action Procedures and Requirements for Product Liability Claims

While there are no formal pre-action requirements to bring a product liability claim, plaintiffs may notify manufacturers, distributors, retailers, and other relevant entities of a potential claim prior to commencement if required to do so by contractual terms, or to preserve rights or attempt early resolution.

In Quebec, the Civil Code provides that plaintiffs must notify the seller in writing of the defect within a reasonable period of time after discovering it. This requirement does not apply to the claims brought under the Consumer Protection Act.

Rules for Preservation of Evidence in Product Liability Claims

The obligation to preserve evidence begins as soon as litigation is reasonably anticipated. This duty applies to all parties in the chain of possession, including manufacturers, distributors, retailers, and consumers.

Courts expect parties to take reasonable steps to ensure that relevant evidence is not altered, destroyed, or otherwise rendered unavailable. In product liability claims, this may include the product itself, as well as its packaging, instructions, related components, and any relevant documentation such as design records, manufacturing logs, purchase records, maintenance logs, or correspondence regarding the product's performance. Where the product is perishable or must be evaluated in a manner that could destroy it (destructive testing), parties are typically required to provide advance notice to other stakeholders and, where possible, permit joint examination or participation in the testing process.

There is no tort of spoliation for the intentional or negligent destruction or alteration of relevant evidence in Canada. Nonetheless, spoliation of evidence can impact the evidentiary phase of an action. Where spoliation is found, courts may make adverse inferences, impose cost awards, or (in rare circumstances) dismiss a claim or defence, depending on the severity and impact of the evidentiary loss.

Rules for Disclosure of Documents in Product Liability Cases

Parties are required to produce all documents in their power, possession or control that are relevant and material to the issues in dispute. This includes documents that support or undermine a party's own case or the opposing party's case. The definition of a "document" is interpreted broadly and encompasses not only paper records, but also electronic communications, emails, databases, audio and video recordings, photographs, and other forms of recorded information. However, most Canadian courts also apply a principle of proportionality to the discovery process, such that parties are expected to take reasonably proportionate steps to collect and produce documents based on the expected relevance/materiality of the information they contain.

In Quebec, the parties have no similar positive obligation to produce documents—disclosure is made through requests for documents and oral discovery, and only the documents covered by those requests must be disclosed.

Relevance is determined by whether the document could reasonably be expected to advance a party's case or damage that of an adversary. Materiality refers to whether the document is logically connected to a fact in issue. In the context of product liability litigation, relevant documents often include records relating to the design,

manufacturing, testing, warnings, quality assurance, regulatory compliance, marketing, distribution, and post-market surveillance of the product in question. Documents evidencing prior incidents, complaints, internal evaluations, and communications with regulators may also be considered relevant.

Parties that fail to comply with disclosure obligations may face consequences during litigation, including court orders for further and better disclosure, cost sanctions, or struck pleadings for persistent non-compliance. In extreme cases, courts may exclude evidence that was not disclosed properly or in a timely manner, or draw adverse inferences.

Certain documents may be protected from disclosure under the doctrine of privilege. The most common forms are:

- solicitor-client privilege, which protects communications between a lawyer and client made for the purpose of seeking or receiving legal advice;
- litigation privilege, which applies to documents prepared for the dominant purpose of the litigation; and
- settlement privilege, which protects the confidentiality of communications made during settlement negotiations between the parties.

Rules for Expert Evidence in Product Liability Cases

The admissibility and use of expert evidence are governed by the rules of evidence as set out in both common law and statutory frameworks, as well as relevant provincial rules of civil procedure.

The court retains a gatekeeping function to determine whether proposed expert evidence meets the threshold for admissibility: namely, the evidence must be relevant to a material issue and necessary to assist the trier of fact in understanding facts of a technical or specialised nature. The expert must be properly qualified, which means they have acquired expertise through study and/or experience outside the knowledge of a layperson. In most provinces, procedural rules require experts to provide an acknowledgement of their duty to the court to provide evidence that is fair, objective, and non-partisan and that is limited to matters within their area of expertise.

Procedurally, parties are required to disclose their expert witnesses in advance of trial; however, there are no pre-trial expert discoveries/depositions. Most jurisdictions require a detailed written report to be delivered before an expert can testify. This must set out the expert's qualifications, the instructions they received, the factual basis for their opinions, the methodology used, and the conclusions reached. Failure to comply with disclosure requirements may result in the exclusion of the expert's testimony.

Burden of Proof in Product Liability Cases

In common law provinces, under the laws of contract and negligence, a plaintiff must prove the required elements of their case on a balance of probabilities. In the negligence context, the plaintiff must establish that the defendant breached the relevant standard of care and that this breach caused loss or injury. For example, in a claim for negligent manufacture, a plaintiff must prove that the product in question was defective, that the defect rendered the product unreasonably dangerous, and that this defect caused the plaintiff's loss or injury.

In contrast, Quebec law typically operates under a regime of presumed liability, placing a particular onus on manufacturers to ensure the safety of their products. A plaintiff in a Quebec product liability case is required to establish injury, defect, and causation. Unlike in common law provinces, the plaintiff is not required to prove fault or negligence on the part of the manufacturer. Instead, the law presumes that a manufacturer is liable when a defect can be demonstrated, shifting the evidentiary burden to the defendant.

Courts in Which Product Liability Claims Are Brought

Product liability claims are typically brought before the provincial or territorial superior courts given their overall jurisdiction for civil matters. These courts—such as the Ontario Superior Court of Justice, the Supreme Court of British Columbia, and the Superior Court of Québec (or the Court of Québec, depending on the value of the claims)—have the authority to hear civil cases involving substantial sums and complex issues, including those related to allegedly defective or dangerous products. For claims involving smaller amounts, provincial small claims courts may also have jurisdiction, subject to monetary limits that vary by province.

Appeal Mechanisms for Product Liability Claims

After a trial court renders a decision in a product liability case, parties dissatisfied with the outcome have the right to seek review by an appellate court. The appeal process does not constitute a re-hearing of the case or allow new evidence; rather, appellate courts focus on errors of law, palpable and overriding errors of fact, and significant procedural issues. This review may include examining whether the trial judge properly interpreted relevant statutes, applied the correct legal principles, or made findings of fact that were unreasonable or not supported by evidence.

There are two levels of appeal in Canada. First, appeals from provincial or superior courts proceed to the respective provincial or territorial Court of Appeal. Second, and in rare circumstances, leave to appeal a decision from a provincial appellate court may be granted to the Supreme Court of Canada if the appeal raises matters of public importance.

In Quebec, a judgment authorising a class action may be appealed by the defendants only with leave of the Court of Appeal, whereas a judgment refusing authorisation may be appealed as of right by the plaintiffs. A decision on the merits is appealable as of right by all parties.

Defences to Product Liability Claims

Defences to product liability claims include assumption of risk, compliance with requisite standards (discussed in [The Impact of Regulatory Compliance on Product Liability Claims](#)), contributory negligence, intervening causes, misuse of the product, and the “learned intermediary” doctrine.

Assumption of Risk

If an individual knowingly and willingly exposes themselves to a known risk associated with the use of a product, the manufacturer or seller may be absolved, wholly or partially, from liability for any resulting injury or loss. The risk must be known and appreciated by the plaintiff; mere exposure to danger is not sufficient, and the assumption of that risk must be voluntary. In the context of product liability, this means that if a plaintiff is fully aware of the dangers inherent in a product and proceeds to use it regardless, the defendant can argue that the plaintiff effectively consented to those risks, thereby limiting or negating the defendant’s responsibility.

Contributory Negligence

The defence of contributory negligence arises when a defendant alleges that the plaintiff’s own actions or omissions contributed to the harm suffered. If successful, this defence does not absolve the manufacturer or distributor of all liability but rather serves to proportionately reduce the damages recoverable by the plaintiff according to their degree of fault. The courts will assess the conduct of both parties, considering whether the plaintiff failed to exercise reasonable care in using the product, ignored warnings, or misused the item in a foreseeable way.

Intervening Causes

This defence arises when a defendant argues that the loss or injury suffered by the plaintiff was not a direct result of any defect in the product or negligence by the defendant, but rather due to an independent and unforeseeable act or omission by a third party—or even by the plaintiff themselves. In product liability actions, this intervening cause is sometimes biological or medical in nature. To succeed with this defence, the intervening act must break the chain of causation between the alleged defect and the harm suffered. Canadian courts consider several factors in assessing this argument, including whether the intervening act was reasonably foreseeable, whether it was truly independent of the defendant’s conduct, and whether it was the proximate cause of the injury. If the court finds that the intervening cause was significant enough to sever the causal link, the defendant may be wholly or partially absolved of liability.

Product Misuse

This defence arises when a product, although potentially defective, was not used in the manner intended or reasonably foreseeable by the manufacturer. If it can be demonstrated that the injury or loss resulted primarily from the consumer’s unforeseeable or improper use of the product, rather than from any defect or failure in the product itself, the courts may limit or even eliminate the defendant’s liability. The burden generally falls on the defendant to prove that the misuse was the direct cause of harm and that such misuse was neither intended nor reasonably foreseeable during the course of normal or anticipated use. Canadian courts will also consider whether adequate warnings and instructions were provided with the product, as the absence of clear guidance may undermine the misuse defence. Ultimately, the success of this defence depends on the specific facts of each case and the ability to show a clear break in causation between any alleged product defect and the resulting injury due to misuse.

Learned Intermediary Doctrine

Manufacturers of certain products—particularly pharmaceuticals and medical devices—may fulfil their duty to warn users of potential risks by properly informing a “learned intermediary,” such as a prescribing physician or other qualified professional. Under this doctrine, the manufacturer’s obligation is to ensure that adequate warnings are given to the intermediary, who then has the responsibility to convey the necessary information to the end user or patient. The courts expect that the intermediary will evaluate this information, weigh it against their medical knowledge and the patient’s personal circumstances, and then decide whether, how, and when to communicate the risk to the patient. If the manufacturer meets its duty to inform the learned intermediary, it may not be held liable for the intermediary’s failure to warn the ultimate consumer properly or completely.

The Impact of Regulatory Compliance on Product Liability Claims

While adherence to regulatory obligations and standards and regulatory approval or licensing of a product are significant factors that courts will consider, they do not provide immunity from liability; rather, they may serve as persuasive evidence that reasonable care was exercised. A plaintiff may defeat a defendant’s defence of regulatory compliance if the relevant standards set only a minimum threshold, or if the plaintiff can demonstrate that the product was nevertheless unsafe or that a higher standard of care was warranted. Ultimately, the courts assess whether compliance with the applicable standards was sufficient to discharge the defendant’s duty of care in the specific circumstances of the case.

Rules for Payment of Costs in Product Liability Claims

Generally, in most jurisdictions in Canada, the prevailing party in a lawsuit is entitled to recover a portion of its legal costs from the losing party—a principle known as the “loser pays” or “costs follow the event” rule. However, the exact amount and nature of costs awarded can vary significantly depending on the circumstances of the case, the conduct of the parties, and the jurisdiction in which the claim is brought. Party-and-party costs (partial indemnity) are the most usual form of cost award. They represent a portion of the successful party’s legal fees, typically ranging from 40% to 60%, and full indemnification for certain allowed disbursements. Solicitor-and-client costs (substantial indemnity) are awarded in rare or exceptional circumstances, such as where there has been misconduct, bad faith, or abuse of process. These provide a higher level of indemnity (often 80% or more of actual legal fees, plus full indemnity for allowed disbursements).

Many product-liability claims in Canada are advanced as class actions, where different rules may apply depending on the jurisdiction in which the class action was commenced. For example, in British Columbia and Quebec, the general rule is that each party bears its own costs at the certification/authorisation stage of a class action, regardless of the outcome. After that stage, the ordinary “loser pays” rules of cost allocation apply. Other Canadian provinces follow the “loser pays” approach to costs both before and after certification.

In every circumstance, the courts retain significant discretion in awarding costs and may consider, among other things, the public interest dimension of the case, the conduct of the parties, and any elements of abuse or bad faith.

Available Funding in Product Liability Claims

Plaintiffs’ counsel often take on product liability claims on a contingency basis. Under a contingency fee agreement, plaintiffs pay legal fees to their counsel—typically a percentage of the amount recovered—only if the claim is successful.

Ontario, British Columbia, and Quebec each have provincial Class Proceedings Funds which can provide financial assistance for disbursements and indemnify representative class action plaintiffs against adverse cost awards. These funds are typically financed through levies recovered from successful class actions and operate under strict guidelines to ensure responsible use. Managed independently—often by boards or public bodies distinct from the government—these funds assess applications to determine whether a proposed class action meets the criteria for financial support, and also consider the merits of the claim, the public interest involved, and the likelihood of the class action advancing access to justice.

Third-party litigation funding is also available in Canada. Typically, an entity unconnected to a lawsuit will provide financial resources to a plaintiff to pursue legal action in exchange for a portion of the proceeds if the case succeeds. Unlike most Canadian jurisdictions, the Superior Court of Québec has recently declined to preapprove a litigation funding agreement (unless limited to costs that have been incurred or are foreseeable), ruling that such agreements could only be approved at the end of the litigation.

Existence of Class Actions, Representative Proceedings or Co-Ordinated Proceedings in Product Liability Claims

Where many product liability claims are advanced in respect of the same product, these will typically proceed as class actions, though some plaintiffs’ counsel also use informal “mass tort” proceedings to advance their clients’ claims.

Canada does not have any mechanism to co-ordinate or manage large numbers of individual claims at the federal or provincial levels that is similar to the US Multi-District Litigation (MDL) system. As a result, class actions are the preferred vehicle for aggregating product liability claims, and a relatively low certification or authorisation threshold including in relation to personal injury claims facilitates this.

As discussed in [Jurisdictional Requirements for Product Liability Claims](#), Canada’s Federal Court is a statutory court of limited jurisdiction. It does not have jurisdiction over tort or contract claims unless such claims arise within the scope of its existing jurisdiction. As a result, “national” product liability class actions are commenced in provincial courts, which often results in the commencement of overlapping and sometimes competing claims. To streamline the co-ordination of overlapping claims, the Canadian Bar Association promulgated the Canadian Judicial Protocol for the Management of Multi-Jurisdictional Class Actions, which makes use of class action legislation and Rules of Civil Procedure in various jurisdictions. This protocol has been adopted by many provincial courts through practice directions.

There has been a marked increase in the number of class actions filed concurrently in Quebec and British Columbia, reflecting a strategic shift by plaintiffs towards jurisdictions perceived as more favourable to class proceedings. Both provinces are considered to have comparatively lower thresholds for authorisation or certification. In Quebec, plaintiffs are not required to demonstrate that a class action is the preferable procedural vehicle, and a single common issue is sufficient to authorise the proceeding. While British Columbia does apply a preferable procedure

test, it is less stringent than Ontario's, which introduced more rigorous requirements, including that common issues must predominate and that a class action must be superior to all other reasonably available means of resolving the dispute.

Although product liability class actions are frequently certified or authorised in Canada due to the relatively low threshold at that stage, there are comparatively few trial decisions that address the merits of the claims. The path to trial readiness often spans five to ten years, prompting many defendants to consider early settlement as a means of mitigating substantial legal costs.

As discussed further in [Trends in Product Liability and Product Safety Policy](#), despite there being no federal or provincial "mass tort" framework in Canada, some plaintiffs' counsel commence informal "mass tort" proceedings by issuing numerous individual claims – often tens or hundreds of claims – advancing identical allegations. In the absence of a procedural mechanism to co-ordinate their advancement, co-ordination requires negotiation and agreement.

Summary of Significant Recent Product Liability Claims

Sanis Health Inc. v British Columbia, 2024 SCC 40

The Supreme Court of Canada held that the relevant section of British Columbia's Opioid Damages and Health Care Costs Recovery Act (ORA) was within British Columbia's legislative jurisdiction, allowing British Columbia to continue a proposed class action commenced on behalf of multiple Canadian governments against opioid manufacturers, marketers, and distributors.

This decision may have a potential impact on future efforts to enact similar healthcare cost recovery legislation.

The class action was authorised in January 2025.

Palmer v Teva Canada Limited, 2024 ONCA 220

The Court of Appeal for Ontario dismissed the plaintiffs' appeal from an order denying certification of a proposed product liability class action claiming damages for a potential increased risk of being diagnosed with cancer in the future.

This decision confirms that risk of future harm is not compensable, and that proposed common issues must have a minimal evidentiary foundation to clear certification.

Recent Policy Changes and Outlook

Trends in Product Liability and Product Safety Policy

Public Nuisance Claims

While causes of action in public nuisance have been traditionally associated with environmental events like acute pollution or toxic spills and resulting harm to public property or resources, plaintiffs have increasingly been asserting the doctrine of public nuisance in connection with various types of goods and services ranging from consumable products to social media.

Unlike traditional product liability causes of action rooted in negligence and/or misrepresentation, which require proving discrete harm to specific individuals, the tort of public nuisance involves allegations of harm to broad public interests – such as public health, safety, or the environment.

At common law, the tort of public nuisance requires a plaintiff to establish the existence of a public right and that there has been an unreasonable interference with that right. As such, it avoids certain key elements required to prove negligence at common law, such as the existence and/or breach of the relevant standard of care. Similar remedies

can also be sought in Quebec under the combined effect of Article 1457 of the Civil Code of Québec and Article 49 of the Québec Charter of Human Rights and Freedoms. Although those statutes do not use the phrase “public nuisance.”, article 49 of the Québec Charter specifically provides that “[a]ny unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom”. These protected interests may include a broad range of public rights, such as the right to live in a “healthful environment” under article 46.1 of the Québec Charter.

Public nuisance claims in Canada thus risk exposing businesses to legal action by individuals or entities with whom they have no previous relationship. For example, in 2019 in *Association québécoise de lutte contre la pollution atmosphérique v Volkswagen Group Canada Inc.*, 2018 QCCS 174, the Superior Court of Québec (as confirmed by the Québec Court of Appeal) allowed Quebec residents to pursue claims against Volkswagen Group Canada based on the public right to a clean environment, even if they had never purchased a Volkswagen vehicle. The vehicles sold by Volkswagen Group Canada were alleged to cause an increase in nitrogen oxide emissions, which the plaintiff claimed was contrary to the Québec Charter right to live in a healthful environment. Similar proposed class actions were filed against the organisation operating Montréal-Trudeau Airport, alleging that nearby residents suffered harm due to aircraft noise and air pollution. However, only the former class action was authorised.

Public nuisance claims may also be used to try to buttress novel product liability claims where claimants seek indirect compensation for the social effects of various products. For example, in 2021 in *Price v Smith & Wesson Corp.*, 2021 ONSC 1114, the Ontario Superior Court of Justice rejected a public nuisance claim against Smith & Wesson for the design of a handgun that had been used in a public shooting. That decision was upheld on appeal in *Price v Smith & Wesson Corporation*, 2025 ONCA 452. Similarly, in 2022 in *Valeant Canada L.P./Valeant Canada S.E.C. v British Columbia*, 2022 BCCA 366, the British Columbia Court of Appeal rejected public nuisance claims against various manufacturers of opioid painkillers alleging that opioid addiction infringed on the public’s rights to health and safety. Although these particular attempts to reframe private causes of action as public nuisance claims were unsuccessful, plaintiffs’ counsel continue to assert public nuisance in class actions and mass tort claims.

These claims also have the potential to expand the scope of the types of industries that may face claims in product liability. For instance, claims based on broader social harms or public nuisance relating to alleged environmental contaminants (e.g., PFAS, microplastics) may impact businesses higher up in the manufacture and/or supply chain for consumer end-products. Similarly, businesses offering technology-based goods and services, e.g., AI tools, social media and/or apps, have also seen an increase in claims along these lines, as have food and beverage companies.

“Mass Tort” Claims

As discussed in [Existence of Class Actions, Representative Proceedings or Co-Ordinated Proceedings in Product Liability Claims](#), class proceedings have historically been the primary vehicle in Canada for advancing large numbers of product liability claims.

However, recently there has been a rise in a competing method for advancing these claims in Canada: the so-called “mass tort” model, where a single set of counsel will commence numerous individual and near-identical claims against the same defendants in various courts across Canada and seek to have the cases proceed in parallel with one another. Unlike in the USA, Canada has no centralised mechanism for managing large numbers of similar cases commenced in various courts. The legal and statutory bases underpinning the claims and the rules of procedure governing how they proceed vary from province to province, meaning that co-ordinating cases across provincial borders may be difficult. Even within a single province, centralised case management is not automatic nor available in every court centre. Thus, the individual claims in the absence of agreement among the parties will generally proceed in the ordinary course and will be subject to the usual procedural requirements of the jurisdiction in which they were commenced. However, most of these proceedings in Canada are in the preliminary stages, thus there is currently limited public information about the strategies that parties are pursuing to advance them.

One of the main distinctions between the “mass tort” model and a traditional class proceeding is the lack of a certification/authorisation step, which can take years to resolve in Canadian courts. Thus, individual claims may move more quickly through pleadings and discovery stages, which may present earlier opportunities for resolution (whether negotiated or adjudicated) although efficiencies may be offset by the administrative and procedural burdens on the parties. Moreover, individual actions may allow each plaintiff greater participation in, and control over, their particular claim.

Future Policy in Product Liability and Product Safety

Governmental Cost Recovery Legislation and Claims

Provincial governments in Canada have been looking to both the legislature and the courts for means to recover health care costs incurred to remedy alleged harms caused by various types of products. While historically focused on specific industries like tobacco and pharmaceuticals, this trend has recently expanded to other industries and may have the potential to grow in the future.

In 2018, the British Columbia government commenced a proposed class action against several manufacturers, marketers and distributors of opioid analgesics. British Columbia originally claimed recovery through several common law torts, as well as under the misrepresentation provisions of the federal Competition Act. The proposed class included all federal, provincial and territorial governments and agencies in Canada that had paid healthcare costs related to opioids.

After commencing the litigation, British Columbia enacted the ORA, which was modelled on similar legislation in relation to tobacco products and which created a direct cause of action for British Columbia to recover health care costs arising from an “opioid-related wrong.” The ORA also empowered British Columbia to bring a class action on behalf of all of the governmental payors in Canada, and each of the other provincial governments subsequently passed equivalent legislation relating to opioid-related wrongs. While the defendants challenged the multi-governmental class proceeding as being outside of British Columbia’s legislative competence, the courts disagreed, with the Supreme Court of Canada ultimately holding in 2024 in *Sanis Health Inc. v British Columbia*, 2024 SCC 40, that the provision and resulting proceeding were constitutional. In the wake of the decision in *Sanis*, the British Columbia government has pursued additional proposed governmental class proceedings, including most recently a claim against certain manufacturers of PFAS-containing products.

Following the enactment of the ORA, British Columbia has taken steps towards implementing similar legislation in other contexts. A proposed Bill 12 passed through a second reading in early 2024 before being put on hold. The Bill would have enacted the Public Accountability and Cost Recovery Act, which was modelled on the ORA but was much broader in its proposed scope: it would have potentially covered the costs of healthcare benefits arising from any alleged “health-related wrongs” that is, any breach of any common law, equitable or statutory duty that causes or contributes to disease, injury or illness. It remains to be seen whether British Columbia or other Canadian provinces will continue to explore the possibility of similar cost recovery legislation that is either broad in scope or targets other industries specifically.

Consumer Protection-Based Claims

Similar to the governments’ increased focus on cost recovery, Canada has also seen a rise in product liability claims brought under the various provincial consumer protection regimes, either in conjunction with, or instead of, claims brought in tort. This is particularly so in British Columbia and Quebec. As discussed in [Product Safety](#) and [Product Liability](#), consumer protection legislation provides direct rights of recovery for losses associated with alleged breaches of warranties of product fitness or quality or with alleged misrepresentations, without the requirement to prove all the elements of a common law tort.

To discuss these issues, please contact the author(s).

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.

For permission to republish this or any other publication, contact [Richard Coombs](#).

All rights reserved.