



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

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Consultation on the Policy for Mandatory Reporting
Consumer Product Safety Directorate
Health Canada
123 Slater Street, 4th floor
Address Locator: 3504D
Ottawa, Ontario K1A 0K9

CELA Publication #749

Via email: CCPSA-LCSPC@hc-sc.gc.ca

Re: Consultation on the Mandatory Reporting Policy for the Proposed *Canada Consumer Product Safety Act*

The Canadian Environmental Law Association (CELA) is a non-profit public interest organization and specialty legal clinic within Legal Aid Ontario. We have worked on issues of product safety for many years as part of our work addressing toxic substances that may be hazardous to the environment or human health, particularly in the area of chronic toxicity concerns.

We have reviewed the proposed Mandatory Reporting Policy in light of Section 14 of Bill C-36, the proposed Canada Consumer Product Safety Act and provide the following comments.

One of the more laudable provisions in Bill C-36, as in the two similar bills that preceded it, is the broad definition in Section 2 of "danger to human health and safety." Specifically, we are very supportive of the fact that this definition includes chronic toxicity. However, section 14 of C-36, regarding incidents and related reporting requirements, does not include or refer to the same language of "danger to human health and safety" as this is defined in the bill. The result is a far narrower definition of what constitutes an incident.

In our view, the mandatory reporting provision in the bill should respond to "dangers to human health and safety" posed by consumer products. Indeed, such language is used throughout the consultation document for this proposed policy. Hence, Section 14 should use the term "danger to human health and safety" so as to clearly link with the bill's definition of this term in Section 2, thus including the reference in that definition to "chronic adverse affect on human health." Otherwise, a disconnect exists between the Section 2 definition, and what constitutes an "incident" under Section 14. Such a disconnect would undermine enforcement authority. A similar problem arises with Section 15 of the bill as it uses the phrase "serious danger to human health and safety" while the Section 2 definition does not include the word "serious."

We note that the proposed policy stays carefully within the confines of Section 14 as that section is currently drafted, i.e., the requirement to report incidents that result or could result in death or serious adverse effect on health. The only possible area within the Section 14 definition of an

incident that does not focus on death or serious injury is a recall by some other jurisdiction "for human health and safety reasons."

However, the policy also states that:

"Companies are to report incidents whether or not an actual injury or other health effect has occurred or whether or not the actual injury or other health effect was itself serious. The potential for injury (often referred to as a "near-miss" incident) may be an indicator that the product is a danger to health and safety and therefore reportable."

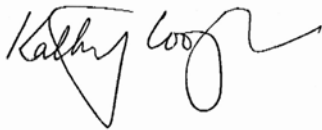
It is frankly not clear what "the potential for injury" or a "near-miss" is supposed to mean. As well, the related statement "whether or not the actual injury or other health effect was itself serious" is equally unclear and would seem to go beyond what is allowed for in Section 14 as it is currently drafted. Moreover, the rest of the language in the policy stays focused on "death or serious injury." It is difficult to see how this policy, or Section 14 of the bill, could ensure that something like lead or cadmium on children's toys would be a reportable incident because such levels are typically fairly low, even if in exceedance of regulatory requirements, and at levels where the concern would be about either latent effects or chronic toxicity.

A great deal of the oft-stated improvement to the product safety regime hinge on this incident reporting requirement providing a means by which there may be improved accountability up the supply chain. It seems unlikely that such improvements will occur beyond very serious situations. As such, we do not see Section 14 or this proposed policy, as providing much of an improvement over the status quo.

Hence, we submit that while the proposed policy might provide sufficient implementation guidance for Section 14 as drafted, we believe that Section 14 itself is poorly drafted and does not live up to the stated intention of improving product safety accountability. Bill C-36 has passed First Reading and Health Canada Product Safety officials have noted in multi-stakeholder briefings that the Bill is likely to be reviewed after Second Reading by the Parliamentary Standing Committee on Health. We will seek to appear before the standing committee to raise these issues.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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