

WORKSHOP ON THE COLLECTION AND ASSESSMENT OF DATA ON PRODUCT-RELATED INJURIES

Canadian Consumer Protection System

Presented by

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Agenda

1. Overview of Canadian Consumer Protection and Product Safety System
2. Complexity of Current System
3. Dealing with the Complexity
4. Possible Insights and Implications for ASEAN Consumer Protection
5. Some US Comparatives
6. Concluding Remarks





Overview of Canadian System

- Highly complex, diverse, decentralized and devolved consumer protection system
- Consequence of federation with large geography, small and scattered population,
- Old constitution (1867) that allocated contract law including consumer transactions and protection to provinces
- And therefore did not foresee the global, digital and knowledge-driven economies



Overview of System Cont.

- Sporadic regulatory reform/cutbacks that arguably favored smaller government, businesses and international competitiveness
- Over consumer rights and well-being
- Leading to criticism of more limited government role in Canadian consumer protection
- With even greater complexity after Department of Consumer and Corporate Affairs was dismantled in 1993



Federal Government Complexity

- Administration of Consumer Product Safety Act of 2011 -- including product recalls -- in one division of Health Canada
- Other parts of Health Canada address food, pharma, cosmetics, medical devices, medical and recreational marijuana/cannabis, pesticides, fertilizer, and chemicals within consumer products
- Financial consumer protection under Financial Consumer Agency of Canada (FCAC)



Federal Complexity Continued

- Consumer fraud under the Criminal Code
- Transport Canada which handles motor vehicle safety and air passenger rights
- Competition Bureau enforces provisions on misleading advertising, product misrepresentation, consumer frauds, deceptive marketing practices
- Competition Bureau administers as well laws on consumer packaging and labelling, textile labelling, and precious metals marking



Federal Complexity Continuing

- Consumer privacy and personal information security under the Privacy Act administered by Office of the Privacy Commissioner
- Wireless Code on the rights and responsibilities of consumers of wireless services -- administered by the Canadian Radio-Television and Telecommunications Commission
- Food safety and inspection under the Canadian Food Inspection Agency



Federal Complexity Concluded

- Climate change and other environmental protection laws and regulations of Environment Canada
- Including policies and programs to promote sustainable consumption
- And the energy efficiency programs of Natural Resources Canada



Sub-National Layers of Complexity

- All ten provinces and three northern territories have their own quite distinct consumer and investor protection and product safety laws, regulations etc.
- Reflecting business, socioeconomic, political, ideological and other differences
- Including licenses for self-regulation to non-government entities (outsourcing regulation)
- Plus municipal bylaws on restaurants etc., taxi services/Uber, construction, municipal services



Complexity/Resulting Challenges For

- Consumers: Where to complain when business ignores your problem -- self protection and greater caution often the only remedy
- Domestic businesses: Where to receive compliance information and advice
- Exporters: Also need to comply with consumer protection and product safety laws of major trading partners e.g. EU, US

Complexities and Challenges Cont.

- Governments and their agencies: Consumer, political and media pressure to address problems and right wrongs -- often are responsibility of other agencies and levels of government
- Limited transparency for all actors e.g. FCAC only federal department/agency with the word “consumer” in its name -- “what’s in a name”
- Consumer Services often “buried” within other provincial and territorial departments



Major Implication of System Complexity

- Consumer protection, product safety, and protection from consumer product-related injury
- Seen as a shared responsibility of
- Many governments and agencies
- Businesses and their supply chains that typically are national and global
- And individual consumers and households



Major Implication of Complexity Cont.

- Requires consumers to have stringer coping skills, self-responsibility, self-regulation to protect themselves from injury, other harm and detriment
- And complain to business when not satisfied
- Not necessarily a bad thing but consumers have many other responsibilities and obligations
- And system adds to vulnerability of many consumers -- especially women with low incomes living on their own, or on their own with children



Many Efforts of Canadian Governments

To Address and Mitigate Consumer Protection, Product Safety, Related Challenges

- Consumer Measures Committee of federal, provincial, territorial governments under the
- “Within Canada” free trade agreement to strengthen the “Canadian common market”
- Federal, provincial, territorial, and stakeholder committee on product safety called the National Public Safety Advisory Committee (NPSAC)



Canadian Government Efforts Cont.

- Regulatory cooperation provisions in free trade agreements with US and EU
- Proactive participation of federal government representatives at OECD Committees on
- Consumer rights and protection, product safety, competition, other laws, regulations, and other subject areas important to consumers
- Policies and programs to promote financial and other forms of consumer literacy and education



Canadian Government Efforts Cont.

- Funding consumer association, academic, other research on improving consumer and related laws and regulations -- often with emphasis on gender, age, education, geographic and social isolation
- Related consumer vulnerability/disadvantage issues in conventional and online markets, and
- Applying a more holistic approach encompassing full range of government policies, laws, regulations and programs that influence consumer well-being



Canadian Government Efforts Cont.

- Federal and provincial authorities cooperating with counterparts in US, EU, other trading partners to identify/prosecute cross-border consumer frauds
- Extensive use of the Internet to provide information to consumers, business, civil society groups on e.g.
- Consumer advisories, warnings, and alerts, and information on product recalls for food, drugs/healthcare products, cosmetics, other products



Canadian Government Efforts Cont.

- And Government of Canada Consumer Product Safety Program annual surveillance report
- Regarding consumer-product related mortality, morbidity/injuries and other harm
- Which uses the US Consumer Product Safety Commission's National Electronic Surveillance System (NEISS) coding manual



Canadian Government Efforts Cont.

Many other efforts of varying quality and success to

- Improve delivery of information and services to consumers, businesses, other stakeholders
- Reduce duplication and overlap and related burdens and complexities across legal and regulatory regimes -- e.g. red tape reduction
- Enhance regulatory impact analysis processes to better address consumer, privacy, competition and related impacts important to consumers

Possible Lessons: Preliminary Only

For ASEAN Consumer Protection

- Subject specific ASEC/AMS committees to promote greater convergence, cooperation, information sharing etc. re consumer protection, product safety, privacy and related laws and regulations on e.g.
- Enforcement practices, analytical methods, consumer complaints, lessons from enforcement cases -- facilitated by a shared, interactive, easy to use website



Possible Lessons: Preliminary Only

- Regulatory cooperation type agreements on consumer protection, product safety and related legal and regulatory matters
- Between AMS and with ASEAN's major trading partners
- Promoting ASEAN wide and AMS consumer research and policy analysis with emphasis on
- Gender and related consumer vulnerability and disadvantage issues



Possible Lessons: Preliminary Only

- Encouraging and funding consumer interest policy and related research within and across all AMS
- With contributions from and research partnerships across governments, consumers associations, other civil society groups, and the academic and policy community
- Greater attention to and more research on potential benefits as well as risks and harms from the digital economy and online retailing for AMS



Possible Lessons: Preliminary Only

- Importance of consumer concerns and complaints, media reports, data on consumer product-related injuries, other harms, and best-practices elsewhere
- For developing new policies, laws, regulations and institutions -- as seen in Canada's consumer product safety law of 2011 driven by concerns with offshore producers and global supply chains
- Leading to adoption of EU's general product safety requirement/prohibition and supply chain approach



Concluding Remarks on Canada

- How the federal government in Canada is working jointly with the provinces and territories on
- Consumer protection, product safety, privacy and related legal and regulatory consumer matters has
- Parallels with how the EU and ASEAN are working with its member states on similar consumer protection, product safety, and injury issues
- Requiring much greater comparative analysis by the Project Team and others in the coming months

Some Comparatives on the US System

Similarities with Canada and Australia

- Federal Trade Commission includes separate bureaus on competition and consumer protection/privacy of roughly equal size/importance
- Similar to the Australian Competition and Consumer Commission model
- Consumer Financial Protection Bureau established in 2011, similar to FCAC in Canada a decade earlier in 2001 -- Australian regime is more diverse



US Comparatives Continued

- Strong role of American states in investigation and enforcement of federal and state laws
- With cooperation through National Association of Attorneys General
- Leading to some of the same challenges and complexities as in Canada now
- And to lesser degree in Australia with its more comprehensive consumer protection law of 2010



US Leadership in Product Safety

- Product safety and collection and use of consumer product-related injury data
- Consumer Product Safety Act (CPSA) of 1972
- Administered from the outset by the Consumer Product Safety Commission (CPSC)
- Consumer Product Safety Improvement Act of 2008 (CPSIA)
- Improved regulatory/enforcement tools and stronger penalties to address new safety hazards



US Leadership in Product Safety

- National Electronic Injury Surveillance System (NEISC) operated by CPSC since 1972
- Global model and leader on consumer product-related injury data
- Used extensively in consumer policy and law research in US and elsewhere



US Leadership in Product Safety Cont.

- Overviews and evaluations of CPSA and later development of CPSIA in 2008 indicate
- Product safety laws in US receive considerable attention from American Congress, media, consumers associations, consumers/general public
- Publicly searchable NEISS database of injury reports mainly from hospital emergency rooms is
- Foundation for many CPSC etc. functions -- research, investigation, remedial, enforcement etc.,



Other American Strengths

- Private rights of action for consumers to use federal and state court systems in order to
- Protect themselves from marketplace fraud and deceptions
- Class action lawsuits and in some cases attorney fee shifted to the defendant
- Stronger consumers associations especially compared with Canada



Trade, Competition and the Consumer

- One important regulatory cooperation and trade and competition innovation from EU
- Which provides major benefits to consumers
- Competition rules instead of antidumping, countervail, other trade remedy laws and tariffs
- Incorporated into the Australia-New Zealand Closer Economic Relations Agreement (CER)
- But not included in Canada/US trade agreements

Questions?

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