

OPINION: CONSUMER PRODUCT SAFETY ACT

Turning safety on its head: is our Consumer Product Safety Act safe?

Modernizing Canada's Consumer Product Safety Act shouldn't take us back to medieval times.

By SHAWN BUCKLEY

KAMLOOPS, B.C.—Our new Consumer Product Safety Act is being sold to us as necessary for our safety. Indeed, my first introduction to the proposed bill was through a large government ad in my local paper when it was first introduced as Bill C-52 (it is now Bill C-36). There were pictures in the ad of vulnerable children, and an explanation of how the bill represented our government's efforts to protect our families. The ad worked. It evoked an emotional response where I actually felt proud that my government was doing something to protect us. Spin and hype aside, a reading of the bill sent chills down my spine. As an armchair legal philosopher, I was horrified at how some of our key legal protections were being sacrificed in the name of safety.

The bill has largely been given a free ride by the mainstream media. Reoccurring government themes, such as we need to update our consumer safety legislation, or we do not currently have the power to order recalls, seem to be endlessly repeated without any questioning as to whether or not the themes are accurate. The result is that Canadians are facing the prospect of a significant change in how the state can interact with the citizen, without meaningful debate and challenge in the mainstream media. Indeed, in my opinion Bill C-36 is dangerous. It overrides significant legal safeguards that protect all citizens. Whether the bill passes or not, Canadians deserve a better debate about the "safety" of our so-called Safety Act.

For example, Canadians should be told that the bill enables the government to seize and control private property without any supervision by the courts. This undermines the rule of law. The rule of law is simply the principle that the state cannot take control of your person or your property without supervision by an independent court. One only has to think back to medieval times to realize how important the rule of law is. Back then, if the state wanted your property, the soldiers came from the castle and took it. If you resisted, you would find there was no independent review from the dungeon. This was a dangerous state of affairs for the citizen, and throughout history blood was shed to establish the rule of law.

Arguably the most significant achievement of a country like Canada is that we have always had the rule of law. Do we want to leave our children a Canada where the state can seize their property without court supervision? Do you want the state to be able to seize your property without court supervision? Do you think giving the state the power to take private property without court supervision leads to a safer Canada? Have consumer products suddenly become so dangerous that we need to sacrifice fundamental legal safeguards? These are important questions that Canadians, MPs and Senators need to answer.

We also need to honestly debate the themes that are being used to sell the bill: that our current safety laws are outdated, and that the government currently does not have the power to order recalls. For

example, when someone like the minister of health says that Health Canada does not currently have the power to order the recall of dangerous products, the average citizen interprets that to mean that Health Canada has no power to protect us. This is false. If a consumer product actually poses a threat, and the seller will not voluntarily recall, Health Canada can go to court and get an injunction backed up by the police. Health



Photograph by Jake Wright, The Hill Times

Health Minister Leona Aglukkaq is responsible for Canada's Consumer Product Safety Act.

Canada could also obtain a search warrant and seize a product. Alternately, the minister can make a binding order under the Hazardous Products Act which must be tabled in Parliament and can be reviewed by a body with similar powers to a court. The real

difference between a court or ministerial order and the power to order a recall in Bill C-36, is that the court and ministerial orders involve supervision by independent bodies. The proposed recall power in Bill C-36 is not supervised. Similarly, Bill C-36 permits the seizure of property without any supervision.

When the minister complains Health Canada does not currently have the power to recall dangerous products, the real meaning is that Health Canada does not currently have the power to control private property without independent supervision. This is something we should be thankful for. Health Canada's inability to arbitrarily order a recall does not mean we are not protected from dangerous products. It simply means that when the state assumes control of dangerous products they are supervised so that there cannot be state abuses. If this is outdated, as the government suggests, then I want us to remain old-school. I definitely do not want any "modernization" of our safety legislation to take us back to medieval times.

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