

# Spotlight

Welcome to the latest edition of spotlight. Spotlight is our way of sharing insights and perspectives from our strategic partners – lawyers, insurers, risk managers and crisis communications experts across industries – on issues that have the potential to influence a company’s view on in-market incidents and crisis management.

In this edition, we are joined by William Troutman (Los Angeles), Kate Findlay (Toronto), and Hernan Gonzalez (Mexico City), partners at Norton Rose Fulbright, for an overview of cross-border compliance with consumer product recalls in North America.

Product safety compliance reaches across North American borders. The U.S. Consumer Product Safety Commission (CPSC), Health Canada, and Mexico’s Procuraduría Federal del Consumidor (PROFECO) have significantly increased their cooperation over the last decade, and now communicate regularly as they work to protect consumers amid explosive growth of ecommerce and the increasingly global reach of brands.

In the U.S., the federal statute for consumer product safety is the Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act of 2008. Under the CPSA, the CPSC issues consumer product safety standards and enforces requirements for the testing and certification of products.

In Canada, the federal statute for consumer products is the Canada Consumer Product Safety Act (CCPSA). Oversight and enforcement of the CCPSA is the mandate of Health Canada’s Consumer Product Safety Program. At the provincial level, there is an additional layer of consumer protection and sale of goods legislation that addresses the safety of products requiring them to be fit for their intended purpose and of merchantable quality.



*William Troutman*

*Kate Findlay*

*Hernan Gonzalez*

In Mexico, the PROFECO operates as a decentralized social service agency of the Federal Ministry of Economy. Their formal charge is promoting and protecting the rights and interests of the consumer and ensuring equality and legal security in the relationships between suppliers and consumers. The Federal Consumer Protection Attorney is appointed by the President and typically serves a 6-year term.

The CPSC, Health Canada, and the PROFECO share information with each other, but what they share and how often is largely unknown. That said, it is our understanding that they collaborate on consumer product safety standards and regulations. Nonetheless, although the three bodies have similar laws, regulations, and standards, they have different triggers and requirements for evaluating product safety and recall.

While a product issue in one country impacts all countries, that doesn’t mean compliance, enforcement and remediation or recall procedures are uniform, and coordinating a cross-border approach can require geometric thinking.

Multi-national companies and those with global supply chains need a multi-jurisdictional strategy to manage differences across borders, from complying with product safety standards to effective remediation opportunities. Adept legal representation is critical in navigating this process.

Each regulatory body in North America expects global brands to understand and comply with its respective regulations. The political climate will also impact enforcement. In the U.S. for example, when the president is a Democrat, the CPSC will likely take a more active role in enforcement and legal action. When the president is a Republican, the CPSC may be more collaborative before resorting to punitive measures.

Reporting consumer product safety information can be the most difficult part of the recall process. The requirements are different in each country, but alerting one regulatory body may result in the other two asking questions.

In the U.S., there are objective and subjective triggers—failing to meet a safety standard or receiving information suggesting a product can result in serious injury or death despite complying with standards, respectively. In Canada, any reported injury or “near miss” can trigger a reporting duty. And in Mexico, there are also subjective standards—any information that a product can affect a person’s life, health, safety, or economy.

Managing the differences in these triggers can be problematic because they often rely on consumer feedback. In addition, the regulators expect companies to monitor and analyze all manner of product data, ranging from website reviews to return rates to customer service complaints and claims. As a result, a company can be in a situation in which a report to Health Canada is required due to one injury, but is not necessarily required—but may be advisable anyway—to CPSC or the PROFECO.

Recall logistics can also be a challenge, as the agencies move at different speeds and have different requirements for recall communications, remedies, and reverse logistics.

It’s important to keep your company up to date with regulatory requirements in all three countries and to incorporate all new regulations into your risk management assessment. There’s no doubt that a multi-jurisdictional strategy is warranted to ensure you are considering all factors and remain in good standing across borders in North America.

## About our guest authors

Mr. Troutman, Ms. Findlay, and Mr. Gonzalez work together on cross-border consumer product compliance issues, ranging from product recall to packaging and labeling.

## About spotlight

Brand and reputation are the most valuable and vulnerable assets a business has. Brands embody and encapsulate everything a business does, and its customers expect. Nothing says more about a company’s commitment to its customers than its efforts to uphold promises of safety, quality and service. However, too often, recall and remediation management is treated as a low priority, only to be applied – or even discussed – when a product needs to be withdrawn from the market. We seek to change that.

Sedgwick’s brand protection spotlight is our way of sharing perspectives from our strategic partners – lawyers, insurers, risk managers and crisis communications experts across industries – on product safety issues that have the potential to influence a company’s view on in-market incidents and crisis management. In some cases, the connection is obvious but the perspective is new. In others, we will raise questions that you may have never considered in the context of recall and remediation management. That’s our intent.

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To learn more about our recall, remediation and retention solutions, contact:

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