Product liability law in Canada is derived in part from common law and in part from legislation.

**common law**

At common law, the typical causes of action for product liability are negligent design, negligent manufacture and breach of the duty to warn. The standard of liability at common law is negligence (rather than a strict liability standard). This means the plaintiff must establish the defendant owed it a duty of care, that the defendant breached the requisite standard of care and that the plaintiff suffered damages that are causally linked to that breach. For causes of action founded in negligence, there is no requirement for privity (e.g. a contractual relationship) between the plaintiff and defendant. The common law of negligence is applied relatively uniformly across nine of Canada’s ten provinces and its three territories. The exception is Quebec, a civil law jurisdiction. It is briefly discussed below.

**legislation**

There are additional causes of action available to plaintiffs arising from provincial legislation which is not necessarily uniform across the country. Sale of goods legislation may provide causes of action for breach of implied conditions of merchantability and fitness for purpose. Consumer protection legislation may give rise to causes of action for deceptive business practices. The requirement for contractual privity to access these causes of action differs from province to province. As noted above, Quebec is a civil code jurisdiction and its product liability laws are far more consumer oriented than those of the common law provinces. For example, a product liability action starts with a presumption of product defect that the defendant has the burden of rebutting.
Causes of action founded in negligence or the legislation noted above can be invoked in both individual law suits and in class action law suits.

**Potential defendants**
Anyone in the supply chain can be targeted as a defendant. The standard of care that must be met by the defendant will depend on where it is in the supply chain with the highest standard typically applied to manufacturers and then to importers and distributors and the lowest standard applied to retailers. With respect to causes of action founded in negligence, liability will typically be joint and several as among the defendants who are found liable. That gives the plaintiff the right to recover 100% of her damages against any one defendant (regardless of that defendant’s share of liability relative to the other defendants), leaving that defendant the task of seeking contribution and indemnity from the other defendants to recover their shares of liability.

**Transfers of liability**
There is no real means of transferring liability from one person in the supply chain to another in the sense that a claim by a plaintiff could be foreclosed. The only real means of transferring liability is through contractual agreements with other companies in the supply chain.

**Potential damages**
Assuming liability, non-pecuniary damages for personal injury in Canada are generally capped at around CDN$380,000. Over and above that, plaintiffs can recover for pecuniary losses including past and future loss of income, past and future cost of care and medical expenses. Most Canadians have access to state medical insurance. However, these state insurers typically have rights of subrogation to recover medical costs from product liability defendants. Family members may also have a claim for loss of care, guidance and companionship.

Pure economic loss (no personal injury or property damage) can be recovered in cases involving breach of contract and warranty claims, however, recovery for economic loss in tort (negligence) is limited in Canada. Typically, losses have to have been incurred to address a potential risk of serious injury or property damage. Or, they have to arise from misrepresentation.

**Limitation periods**
Limitation periods in Canada generally range from two to six years depending on the province. Limitation periods are subject to the “discoverability” principle which can extend a limitation period where the plaintiff was unable to “discover” the claim until after the limitation period expired.

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained. For more information contact your regular McMillan advisor or go to http://www.mcmillan.ca.