



# DICKINSON WRIGHT

Doing Business in Canada – 2023

**Wendy G. Hulton** | *Partner* | Toronto, CA

# THE FINE PRINT

*The views expressed in this presentation are solely those of the presenter and should not be attributed to Dickinson Wright LLP/Dickinson Wright PLLC. We make no claims, promises or guarantees about the accuracy, completeness or adequacy of any information referred to or contained herein.*

*No person should act or refrain from acting in reliance on any information found herein without first obtaining appropriate legal advice. This presentation was presented for informational purposes only and does not constitute legal or other professional advice.*

*© 2023 Dickinson Wright LLP/Dickinson Wright PLLC*



# TODAY'S TOPICS

- Canada's Consumer Product Safety Act
- Privacy
- CASL





# Canada is Not the 51<sup>st</sup> State

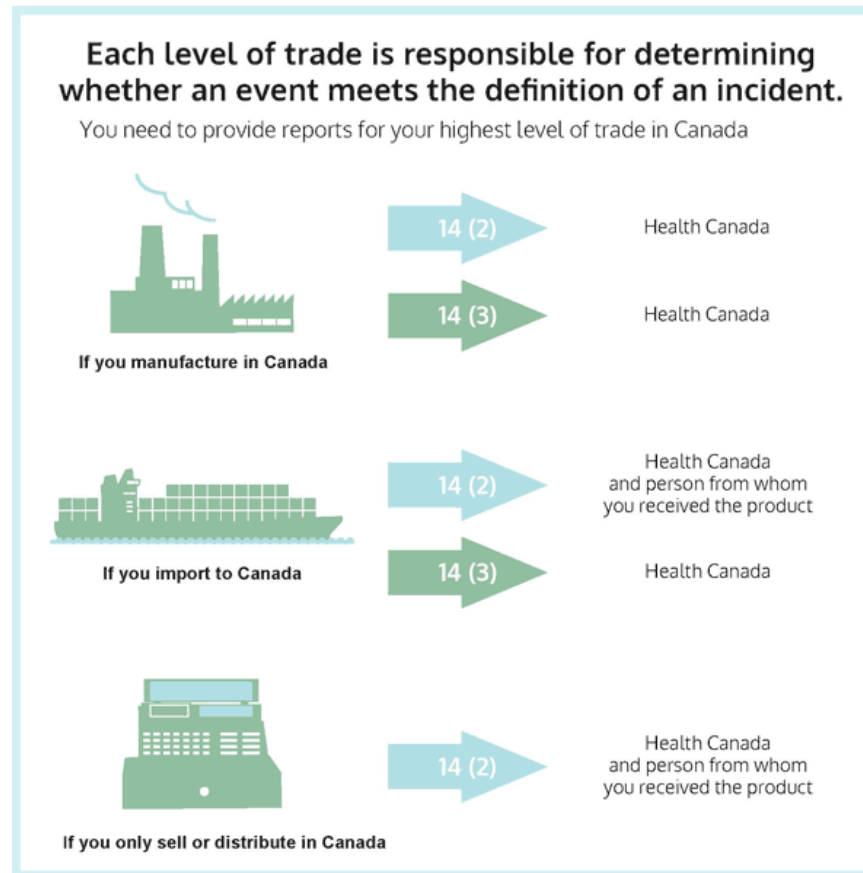




# ***Canada's Consumer Product Safety Act***

- Responsibilities as a direct seller supplier/independent sales contractor
- Buying products from outside Canada to sell in Canada
- Mandatory maintenance of documents in Canada
- Reporting of incidents
- Product recalls
- Compliance and enforcement

# What businesses are covered by Canada's consumer product safety laws?



**Section 14(1) of *Canada Consumer Product Safety Act* - An incident** means, with respect to a consumer product,

- an occurrence in Canada (or elsewhere) that has or may result in serious adverse health effects
- a defect or characteristic that has or may result in serious adverse health effects
- incorrect or insufficient information on a label or in instructions
- a recall or measure initiated anywhere by anyone for human health or safety reasons

## Section 14(1) of *Canada Consumer Product Safety Act*

What constitutes an “Incident”?

When is a Company “Aware” of an Incident?

Health Canada: “It is an industry’s responsibility to determine if an event involving their product is an **incident** that must be reported...”



# Mandatory Incident Reporting Overview



# Challenges with Cross-border Recalls

- Difference between CPSC and Health Canada
- Controlling Info flow – employee emails
- Attorney Client Privilege[Canada/US]
- Information sharing between CPSC and HC



Health  
Canada



Your health and  
safety... our priority.

Votre santé et votre  
sécurité... notre priorité.

## Canada Consumer Product Safety Act

### INFORMATION FOR DIRECT SELLERS (Suppliers and Independent Sales Contractors)

This fact sheet is directed at those who sell consumer products, particularly small operators, where inventory typically comes from a single supplier and where sales primarily occur in private homes rather than retail stores. Such sellers are often called "direct sellers" or "independent sales contractors."

The purpose of the *Canada Consumer Product Safety Act* (CCPSA) is to protect the public by addressing or preventing dangers to human health or safety that are posed by consumer products in Canada.

The CCPSA contains requirements for the manufacturing, importing, selling, advertising and testing of consumer products in Canada. Under the CCPSA, the Minister of Health (Health Canada) has the power to order recalls of products on the market that pose a danger to human health or safety.

A consumer product under the Act is a product that may reasonably be expected to be obtained by an individual to be used for non-commercial purposes, such as for domestic, recreational or sports purposes. This definition includes the product itself, the product's components, parts, accessories and its packaging.

Under the *Canada Consumer Product Safety Act* (CCPSA), selling a consumer product includes leasing the product or distributing the product to one or more persons even if there is no money or other consideration exchanged for the distribution.

Manufacturing a consumer product includes producing, formulating, repackaging and preparing it. It also includes reconditioning the product for sale.

The CCPSA does not apply to certain products that are covered by other legislation, such as:

- explosives
- cosmetics
- drugs
- natural health products
- food
- medical devices
- ammunition

The Act does apply to tobacco products but only in relation to their ignition propensity.

#### YOUR RESPONSIBILITIES AS A DIRECT SELLER SUPPLIER/INDEPENDENT SALES CONTRACTOR

Product safety is in everyone's best interest. Under the *Canada Consumer Product Safety Act* (CCPSA), you have certain responsibilities as a direct seller (supplier or independent sales contractor) of consumer products. These include:

- preparing and maintaining documents indicating certain information about the consumer products that you sell (section 13 of the CCPSA)
- reporting health or safety-related incidents, related to a consumer product that you sell, to Health Canada and to your supplier (section 14 of the CCPSA)
- not selling:
  - › prohibited consumer products listed in Schedule 2 of the CCPSA
  - › consumer products that do not comply with product-specific regulations, for example, there are safety or performance requirements in regulations pertaining to candles, kettles, lighters, children's sleepwear, glazed ceramics, children's jewellery and many other consumer products (a full list of regulated products is available on the Justice Canada website at [www.laws-lois.justice.gc.ca/eng/acts/C-1.68/index.html](http://www.laws-lois.justice.gc.ca/eng/acts/C-1.68/index.html))
  - › consumer products that are a "danger to human health or safety," as this phrase is defined in section 2 of the CCPSA
  - › consumer products that are labelled or packaged in a manner misleading as to their safety

[www.healthcanada.gc.ca/productsafety](http://www.healthcanada.gc.ca/productsafety)



# Privacy Laws in Canada

## *Personal Information Protection and Electronic Documents Act*

Key provisions of PIPEDA are:

- organizations are required to seek the consent of individuals prior to collecting, using or disclosing their personal information;
- organizations must protect personal information with security safeguards appropriate to the sensitivity of the information; and
- individuals may access personal information about themselves held by an organization and have it corrected, if necessary.



# ***The Personal Information Protection and Electronic Documents Act (PIPEDA)***

- Canada's federal private sector privacy law.
- Set out ground rules for how businesses must handle personal information in the course of commercial activities.
- What is Personal Information?
- Any factual or subjective information, recorded or not, about an identifiable individual.

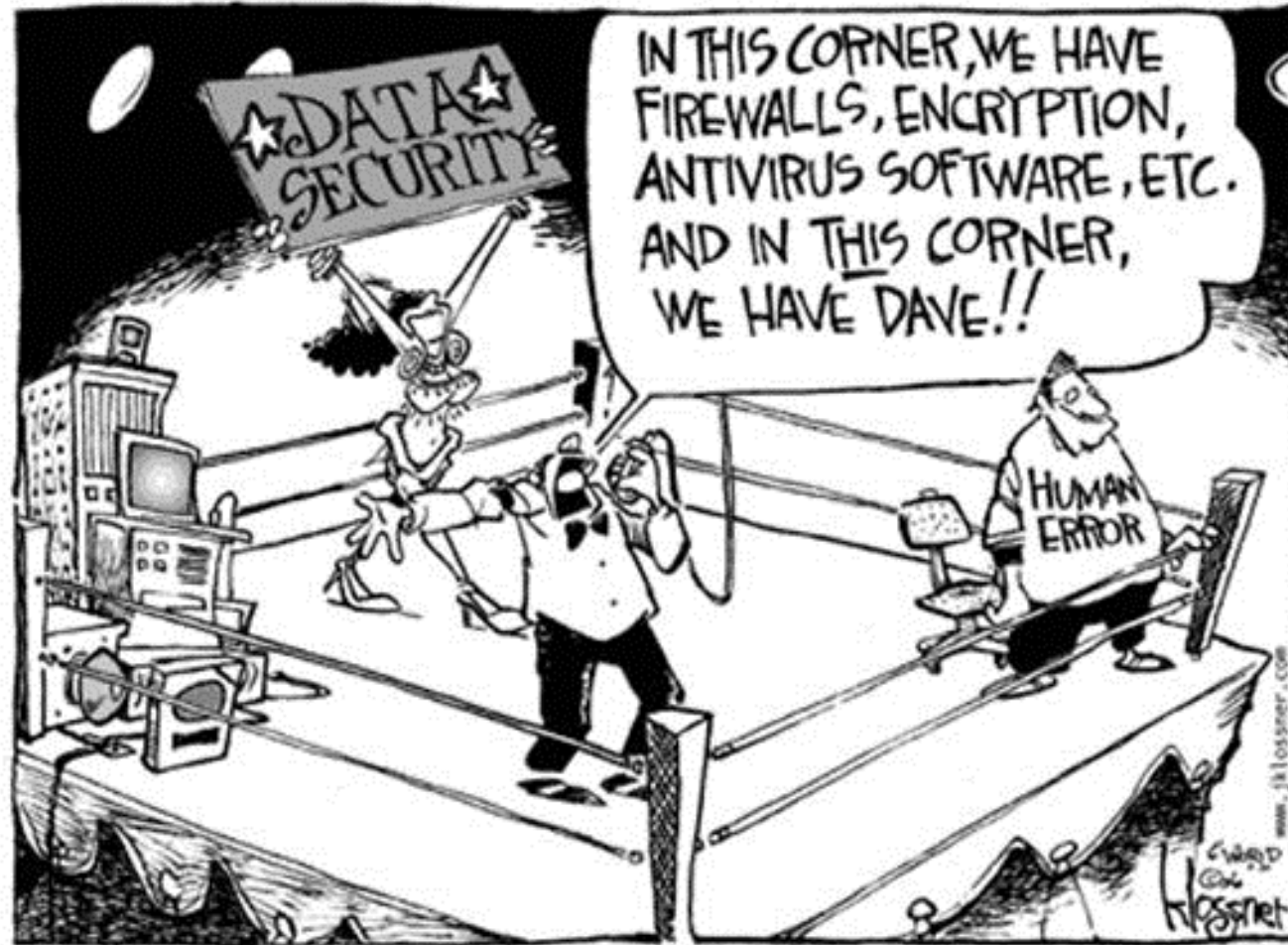




# **Businesses must follow PIPEDA's 10 fair information principles to protect personal information:**

- Accountability
- Identifying purposes
- Consent
- Limiting collection
- Limiting use, disclosure and retention
- Accuracy
- Safeguards
- Openness
- Individual access
- Challenging compliance

# Mandatory Data Breach Reporting



# Privacy Compliance Checklist:

Sorry, no time to cover this, but send me an email if you would like a complimentary copy of our privacy compliance checklist.



# Canada's Anti-Spam Legislation (CASL) Regulates:

- sending of commercial electronic messages;
- altering of transmission data;
- installation of computer programs;
- misleading electronic messages or websites;
- use of spyware, malware, botnets, and phishing;
- automated collection of electronic addresses;
- use of computers to collect personal information.



# CASL BASICS

CASL prohibits sending a CEM unless the recipient consents to receiving the message.







# What is a CEM?

- What is an Electronic Message
- What makes it “Commercial?”
- **CONSENT**

➡ **Express**

➡ **Implied**





# CASL vs. U.S. CANSPAM

- CASL applies to Non-residents (located outside of Canada) that sends a message to an individual or organization located in Canada.
- CASL's provisions applicable to the sending of commercial electronic messages apply where a computer system located in Canada is used to send or access such messages.



# Communications that fall outside the scope of CASL

- Family or personal communications (no commercial elements)
- Response to a commercial inquiry
- Internal business communications
- To provide warranty, product recall or safety information
- Information related to an employment relationship
- Legal communications
- Canada Post



# **No Consent is required to send electronic messages in connection with:**

- Quotes or estimates
- Messages that facilitate or confirm transactions
- Provides warranty, recall, safety or security information
- Provides information about
  - ongoing use or ongoing purchases
  - ongoing subscription, membership, accounts, loans or similar
  - employment relationships or benefit plans
- Delivers a product good or service, including updates and upgrades

# ENFORCEMENT PROCESS

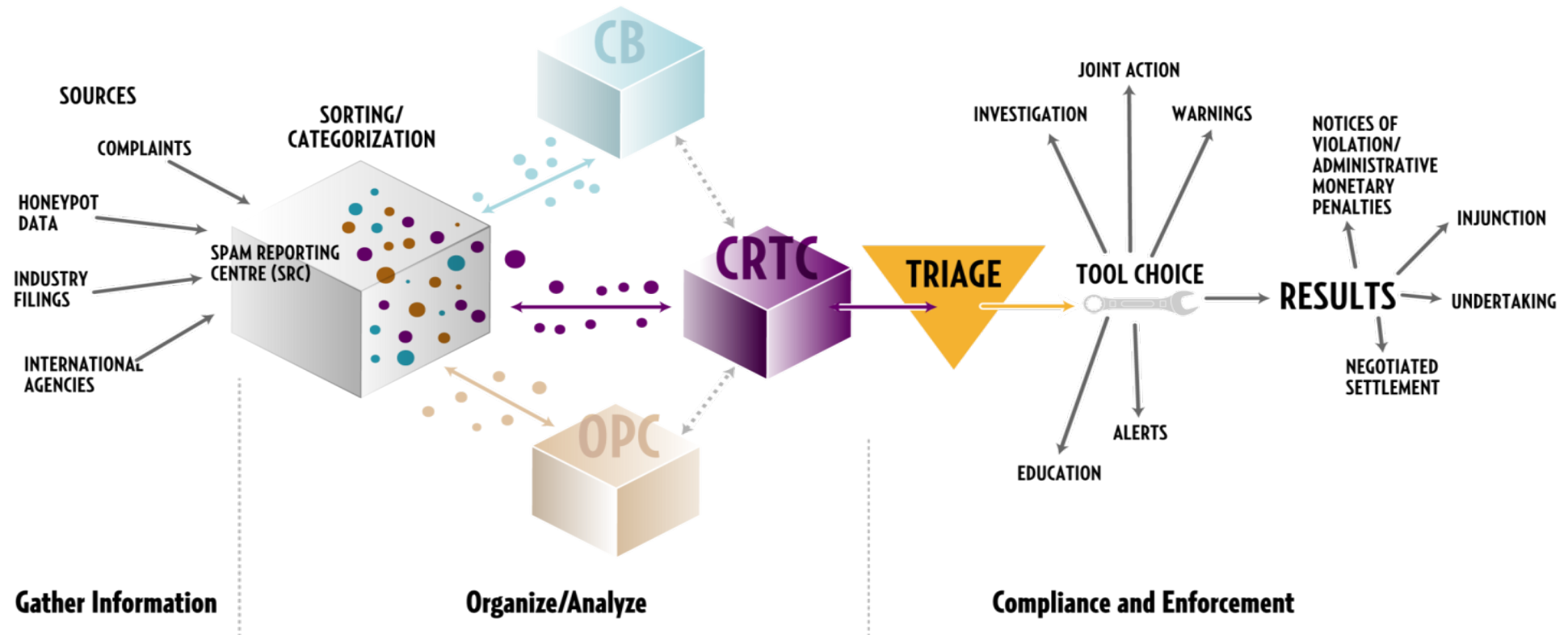


Image Source: CRTC Powerpoint Presentation





# PENALTIES & PRA

- Fines (millions of dollars)
- Personal liability for directors and officers
- Brand Damage - Reputational Risk



# OFFICERS AND DIRECTORS

- Directors and officers of corporations who contravene CASL or violate PIPEDA violations or the *Competition Act*.
- Liability: if they directed, authorized, assented to, acquiesced in or participated in the commission of that contravention, or engaged in that conduct, whether or not the corporation itself is actually proceeded against.
- Companies will also be vicariously liable for the actions of their employees (and often ISCs).



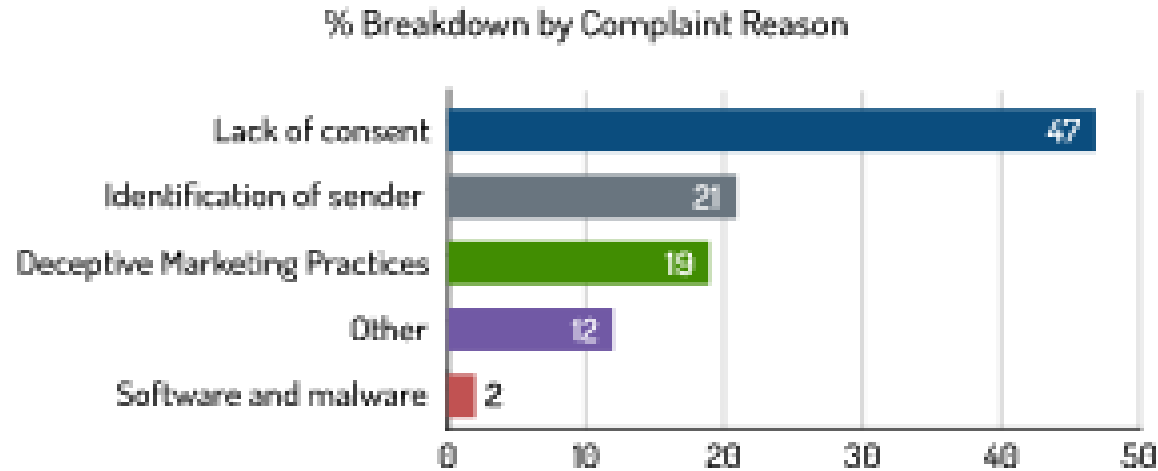
# Complaints to the Spam Reporting Centre

Between April and September 2022

Over 159,101 complaints

That's 6,119 per week

# Reasons Why Canadians Complain

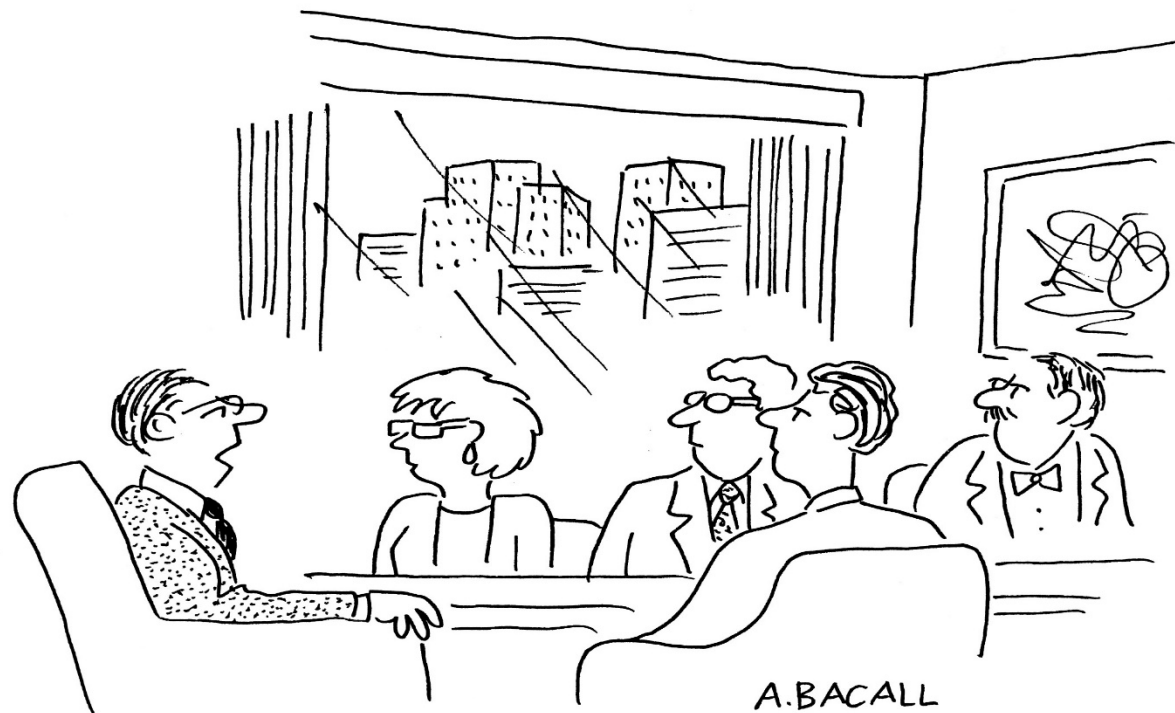


Complaint reasons and percentages

- Lack of consent: 47%
- Identification of Sender: 21%
- Deceptive Marketing Practices: 19%
- Other: 12%
- Software and Malware: 2%

Note: The total does not add to 100% since Canadians can select more than one category for a complaint.

# QUESTIONS



**“We have to develop a new way to build our customer base. Antispam software has put a dent in our marketing strategy.”**





**[www.dickinsonwright.com](http://www.dickinsonwright.com)**

**WENDY HULTON**

**P: 416.777.4035 | [whulton@dickinsonwright.com](mailto:whulton@dickinsonwright.com)**

**199 Bay Street | Suite 2200 | Commerce Court West | Toronto, ON | M5L 1G4**

**Exploring opportunities.**

**Expanding possibilities.**