



ALBERTA CONSTRUCTION INDUSTRY COMMUNIQUÉ

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PRODUCT LIABILITY AND RISK WARNINGS

Manufacturers of materials and equipment can be liable for accidents from the use or misuse of their product. Products with inherent risks associated with their use and misuse can be placed in three categories:

1. Products where the risk is so obvious and well known that a warning is not required;
2. Products where the risks are less obvious and less well known, and where a warning is needed to alert the user to the risk; and
3. Products where the risk of injury or damage, or the serious consequences of a relatively low risk of injury or damage, are so great that a warning is not enough.

There is no duty to warn a purchaser of obvious risks: everybody knows that a food processor has sharp blades, that a knife will cut, that a match will light on fire, or that a hammer may mash a finger.

In the industrial setting, a warning is not always required when the product is intended for a specialized use or market and the risks associated with the product are known to the intended users. For example, a court ruled that the manufacturer of grinding disks used in the auto body repair industry was not required to warn of the risks of operating the disk at extremely high RPM. It was common knowledge in the auto body repair industry that grinding disks will shatter when used at excessive rotational speeds.

In circumstances where the risks are less obvious, a manufacturer has a duty to warn of those risks. The warning must be reasonably communicated, and must clearly describe any specific dangers that arise from the ordinary use of the product. The adequacy of the warning depends on the audience, the probability of a mishap, and the potential consequences of a mishap.

A manufacturer is also required to warn the users of its products about common ways the product can be misused. However, a manufacturer is not held to a standard of perfection. A court ruled that there was no duty to warn of the risk of a worker falling into the feed hopper of industrial equipment when working from an unexpected and unusual position. Such risk was not foreseeable, so a specific warning was not required. In another case, a court ruled that the user of equipment that has certain obvious hazards (in that case a machine for loading shotgun shells with gunpowder) has an obligation to read the instructions.

Where the end user is a consumer, or where the potential consequences are extreme, a warning must be more comprehensive. For instance, a warning to keep a floor sealing product away from ignition sources and to use it in a well ventilated room was inadequate because it failed to warn the user that fumes

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could be ignited by the pilot light in a water heater. The court ruled that the warning was not specific enough relative to the degree of danger associated with use of the product by a homeowner in a gas-serviced residence.

Manufacturers should always err on the side of caution when it comes to warnings. In a recent case, it was ruled that the manufacturer of an ice re-surfacing vehicle was negligent for failing to warn users of the vehicle not to put hot water in the gasoline tank. The manufacturer was negligent even though it had no knowledge of the possibility of confusion between the hot water tank and the gasoline tank.

A manufacturer has a continuing duty to warn if it learns of a risk or defect after delivery of a product. In a case involving a potential defect in a helicopter part, it was ruled that a mere warning of a risk is not enough unless it outlines (a) the risk of failure, (b) the need for a repair, and (c) the potential consequences of failing to follow the recommended repair.

Sometimes, the risks associated with a product are so high that even a warning is inadequate. Courts have ruled that the manufacturer does not have the right to manufacture an inherently dangerous product when a method exists for manufacturing the same product without risk of harm. In the leading case, the manufacturer of a riding lawn mower was negligent for a design that placed the gas tank in close proximity to the battery, thus creating a risk of fire by a spark while refuelling the tractor. Because there was a much safer design available, the manufacturer was found to be liable despite warnings that it gave to owners after it discovered the problem.

In conclusion, a manufacturer must design its product in a way that minimizes risks to the end user. A manufacturer must consider safe alternatives to its design. Having chosen to manufacture a particular product, a manufacturer must assess the risks associated with the use and foreseeable misuse of the product. A manufacturer must take into account the intended users of the product, and must devise warnings of all foreseeable risks, taking into consideration what risks are obvious and not obvious to the intended users of the product. In assessing what risks must be brought to the attention of a user, a manufacturer must take into consideration the probability of misuse as well as the potential severity of the consequences of misuse. If a manufacturer becomes aware of a risk after a product has been sold, it will have an obligation to warn end users of the risk, and must take all steps to ensure that the warning is brought to the attention of those users.

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