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Newsroom

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International Incident

January 27th, 2014

The CSA's monopoly on hockey helmet certification appears to be in violation of multiple sections of the North American Free Trade Agreement (<http://www.worldtradelaw.net/fta/agreements/nafta.pdf>) (NAFTA). RestoreCSA has filed a Request for Investigation with the relevant departments of NAFTA signatory governments and the designated Investigating Authorities of the NAFTA Secretariat.

Canadian Federal law states (<http://laws-lois.justice.gc.ca/eng/regulations/SOR%2D2011%2D21/page-1.html#h-1>) as follows: "Ice hockey helmets **must** meet the requirements of Standard Z262.1, entitled Ice Hockey Helmets, published by the Canadian Standards Association, as amended from time to time."

We acknowledge that the Minister of Industry, James Moore (http://www.ic.gc.ca/eic/site/icgc.nsf/eng/h_07019.html), has recently declared (<http://www.restorecsa.com/news/article/private-ownership-of-public-law>) that laws which were lobbied for by private companies aren't enforceable as laws and further, that the CSA doesn't report to his Department or to him personally as Minister.


We also note however, that as a Government Minister, James Moore is in a minority of one. To date, every provincial government in Canada is openly defying Minister Moore's Parliamentary Determination and his cabinet colleagues are united against his position. For example, RestoreCSA recently received a letter from the Minister of Finance identifying by name that James Moore is indeed the Minister responsible for the CSA. This is the second time that the Minister of Finance has written to identify James Moore as the responsible Minister.

One should also point out the language of the federal law, that compliance with CSA generated text is a "requirement." One should further note the that these "requirements" are accepted as federal law "as amended from time to time." That is, the CSA has the right to amend this federal law without Parliamentary approval or even review.

In this context, RestoreCSA is confident that compliance with CSA's helmet standard is a federal requirement rather than a suggestion. And we're not alone.

Health Canada states (http://www.hc-sc.gc.ca/cps-spc/pubs/cons/consumer_prod-consommation-eng.php) that "face protectors **must** meet the CSA standard Z262.2 (<http://shop.csa.ca/en/canada/injury-prevention/z2622-09/invt/27008902009>)" and that "helmets and face protectors **must** have labels showing these standards" and that "the face protector **must** have a label showing CSA Z262.2 and the helmet **must** have a label showing CSA Z262.1 (<http://shop.csa.ca/en/canada/injury-prevention/z2621-09/invt/27009292009>)." Health Canada even helpfully offers this advice: "If in doubt,

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check the list of CSA certified products which is available at" ...and then they link directly to CSA's own website.

Skate Canada (http://www.skate-eos.on.ca/Documents/General/Policy_Helmet-SkateCanada_QA.pdf) also thinks that CSA helmet "standards" are actually laws. Everyone "**must** wear a CSA approved hockey helmet" and, if that wasn't clear enough, people "**must** wear a CSA approved hockey helmet when on the ice."

Note, by the way, that the helmets must be hockey helmets, even though almost none of Skate Canada's programs involve hockey. That's because the CSA only drafts laws for hockey helmets. And that's why figure skaters, speed skaters, synchro skaters (etc) are all obligated to wear hockey helmets in their unrelated sports. Its like mandating that only certified Ford parts may be used to fix your car. Even if you drive a Volvo.

"In order to ensure the safety of all skaters," says Skate Canada, "all 'friends' **must** wear a CSA approved hockey helmet." That is, even skaters not affiliated with Skate Canada must comply with CSA laws in order to skate near people affiliated with Skate Canada.

Coaches are advised to police the helmet laws on behalf of the CSA. For instance, if a coach sees a skater "without the proper helmet" the coach should "escort the child off the ice."

"How can I identify a hockey helmet that is CSA approved?" Well, Skate Canada answers its own question thusly; "the CSA approved logo will be found on the back of the hockey helmet affixed to the outer shell of the helmet. For more information..." and then they link directly to CSA's own website.

How does all this help the CSA? Well, as Skate Canada instructed, "if the CSA sticker is not present, throw the helmet away." That'll sell more helmets (<http://www.restorecsa.com/news/article/standards-for-sale-part-2>). And what does CSA's helmet law actually say? Well, its a secret law, you're only allowed to know what the law says if you pay CSA \$81 for the privilege of reading it. Plus another \$81 to read about your helmet's face protectors. Plus tax.

Other organizations say the same things. Hockey Nanaimo (<http://www.hockeynanaimo.com/wordpress/wp-content/uploads/2013/07/safety-helmet-certification.pdf>) for instance, states that "this means that [helmets] **must** have the CSA certification sticker." And "all helmets **must** be CSA certified." And "if this sticker is not on the helmet, the helmet is NOT certified, and cannot be used." And "the only way to replace this sticker is to buy a new helmet." There's the money (<http://www.restorecsa.com/news/article/standards-for-sale-part-1>) again.

"If a coach does not have a certified helmet [...] all sanctioning and insurance is removed for everyone on the ice." Wow. What Hockey Nanaimo is saying is that everyone loses their insurance coverage if one person is missing their CSA label.

Hamilton City Hockey League (http://hamiltonhub.com/Articles/1503/CSA_Helmet_Bulletin_from_the_OHF/) is even more aggressive. "If during the normal course of his / her duties" a referee observes that a CSA label is missing, the game is halted and "the referee shall report this incident on the back of the Game Report [...] and the violation should then be reported to the league president." Actually, under Article 28 of the Hazardous Products Act (<http://laws.justice.gc.ca/eng/acts/H-3/FullText.html>), "noncompliance" with CSA's laws may "include a fine of up to \$1 million and / or imprisonment for two years." That's a bit rough, even for hockey.

/news/archives
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(<http://www.restorecsa.com/news/archives/2013/08/>)

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The City of Mississauga (http://www7.mississauga.ca/Departments/Rec/recreation/docs/skating/skating_program_descriptions.pdf) reminds skaters of CSA's label requirements no fewer than fourteen times in one policy document. CARHA Hockey (<http://carhahockey.ca/1154/is-your-helmet-csa-approved>) reminds Canada's adult players of the need for the CSA label. Mooretown, Ontario even describes the sticker as having "a round blue and red CSA" mark on them. This, after nearly everyone noted above includes pictures of said sticker.

And then there's figure skating. At Forest Hill Figure Skating Club (http://www.fhfsc.ca/FHFSC/helmets_and_skates.html), all figure skaters "**must** have a CSA approved hockey helmet." Doesn't it seem odd that "CSA approved hockey helmets are mandatory" for figure skaters? Wouldn't figure skating helmets be more appropriate?

RestoreCSA understands these positions, they're not driven by Hamilton or Nanaimo or Skate Canada. These positions are compliances with CSA's Federal laws. And that's a NAFTA problem.

Article 904 (<https://www.nafta-sec-alena.org/Default.aspx?tabid=97&ctl=SectionView&mid=1588&sid=26e51195-68cc-4fd3-9b34-23fa182ca87b&language=en-US>) of the North American Free Trade Agreement (NAFTA) reads, in part, as follows:

"Each Party shall, in respect of its standards-related measures, accord to goods and service providers of another Party [...] treatment no less favourable than that it accords to like goods, or in like circumstances to service providers, of any other country."

Yet a Canadian company, the CSA, is afforded preferential treatment -indeed, monopolistic treatment- by entirely excluding all foreign organizations in certifying hockey helmets.

Article 904 continues:

"No Party may prepare, adopt, maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties."

Yet under current Federal law, US and Mexican standards companies are specifically excluded from the Canadian market.

Article 907 (<https://www.nafta-sec-alena.org/Default.aspx?tabid=97&ctl=SectionView&mid=1588&sid=26e51195-68cc-4fd3-9b34-23fa182ca87b&language=en-US>) precludes "unjustifiable distinctions between similar goods or services."

Note that the United States has quite a few NHL teams and many thousands of ice skating citizens, and they already have "similar" helmet laws in place to protect them. In the context of existent US helmet laws, Canada's Federal laws giving CSA a monopoly on helmet certification seems an attempt to "discriminate between similar goods or services for the same use under the same conditions that pose the same risk level or risk and provide similar benefits." In this, the CSA's helmet laws appear to "result in arbitrary or unjustifiable discrimination against goods or service providers of another Party." And "Party" in this context, means "country." Further, by giving CSA a monopoly, Canada's action appears to "constitute a disguised restriction on trade between the Parties."

According to Carleton University (<http://carleton.ca/sppa/wp-content/uploads/ch11.pdf>)'s Andrew Morrison and Kernaghan Webb, when considering the CSA standard as law during the original NAFTA negotiations, "concerns surfaced" that such an act "might constitute a trade barrier contrary to Article 603 (<http://www.worldtradelaw.net/fta/agreements/nafta.pdf>) [the Import and Export Restrictions clauses]." They continue that "although it was suggested that the

regulation could be justified under the health and safety exception, there was no concrete evidence that the CSA standard was superior to the major American standards.” This relates to the “unjustifiable distinctions” as “unjustifiable discrimination,” as noted above.

So why run the risk of a trade dispute over hockey helmets? Well, there's a lot of profit (<http://www.restorecsa.com/news/article/standards-for-sale-part-1>) to be had in controlling (<http://www.restorecsa.com/news/article/standards-for-sale-part-2>) the regulatory process. As Skate Canada said, “if the CSA sticker is not present, throw the helmet away.” Health Canada’s Product Safety Bureau “has inspectors (<http://carleton.ca/sppa/wp-content/uploads/ch11.pdf>) across the country to administer” CSA’s helmet law. And they can prosecute. Most of the time however, “prosecution was unnecessary, as the [competing] manufacturer was persuaded to withdraw” from the Canadian market. In other words, CSA’s helmet laws not only generate money for CSA in sales of access to the law, but they also serve to keep other manufacturers’ of helmets out of the market, thereby enhancing the manufacturing business of CSA members.

So, would anyone care to bet which helmet manufacturers are on CSA’s helmet committee?

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