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Canadian Regulation of Contests, Prizes and Games

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Canadians like to participate in public, advertised contests and games. We compete for prizes. Most often we are unaware that the promoters of these events are governed by specific rules in relation to them.

The law on contests, prizes and games is sometimes classified under marketing law.

A level playing field for these activities protects consumers from unfair or deceptive promotional activities relating to the contests and games. In its simplest form, gambling involves a prize, a chance and a consideration (money or other economic value) exchanged. Business promotions that are a combination of these three elements constitute a form of gambling. The state has an interest in protecting average citizens from wasting their time and energies engaged in what are essentially fraudulent activities. Reducing the incidence of fraudulent activity in commerce is not only fair to honest competitors, but it also increases confidence in, and respect for, our competitive marketplace.

This article identifies and highlights the federal and provincial regulation of contests, games and prizes.

Federal Regulation

Criminal Code [2]

In its simplest form, gambling involves a prize, a chance and a consideration (money or other economic value) exchanged. Business promotions that are a combination of these three elements constitute a form of gambling. Most businesses circumvent the gambling characterization by removing or changing one of these three elements. For example, the business charges nothing (no consideration) for its customers to win a prize. Perhaps skill (as in answering a question) replaces random chance. These contests, prizes and games are technically not gambles. They are legal and unregulated.

In Canada all gambling-related activities – that is, those involving a prize, chance and consideration exchanged – start with the Criminal Code (s. 201 – 209) [3] Given the substantial consideration that might be exchanged in pursuit of an elusive prize, serious social and moral hazards accompany gambling. Moreover, governments have enjoyed the extraordinary revenue stream that may be harvested from controlled, legalized and regulated gambling. Accordingly, all gambling is generally criminalized in Canada (see section 206).

After initially criminalizing all gambling, the Criminal Code, in the next section (s. 207), sets out exceptions. Activities which are provincially-licensed and regulated are deemed to be legal gambling. Few business promotions involving contests, games and prizes will need to be registered under provincial gambling programs.

The Criminal Code also criminalizes cheating at play and failing to comply with the provincial

regulations (s. 208 and 209). The provinces have established large, complex administrative agencies such as the Alberta Liquor and Gaming Commission and the Ontario Lottery and Gaming Corporation, supported by detailed regulations and processes to implement legal gambling in their jurisdictions.

Competition Act [4]

Any business using a contest as a promotional tool must disclose specifics of the prizes such as the number and value of the prizes, the areas in which the prizes are being distributed, and anything that affects the chances of winning. Similar to the *Criminal Code* general prohibition of gambling, section 53 begins with a blanket prohibition:

53 (1) No person shall, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, send or cause to be sent by electronic or regular mail or by any other means a document or notice in any form, if the document or notice gives the general impression that the recipient has won, will win, or will on doing a particular act win, a prize or other benefit, and if the recipient is asked or given the option to pay money, incur a cost or do anything that will incur a cost.

This provision, enacted in 2002, in complicated legal language, Any business using a contest as a promotional tool must disclose specifics of the prizes such as the number and value of the prizes, the areas in which the prizes are being distributed, and anything that affects the chances of winning. says that to promote itself in any way, businesses cannot send out any document that creates the impression the recipient, by paying money or incurring a cost, has won or will win anything.

Punishment is a fine for a corporation, and for a corporate director or officer a fine and up to 14 years imprisonment.

By now, readers may be wondering "how do promotions such as 'Roll Up the Rim to Win' pass muster with this general prohibition?" The answer is found in the general exception. Businesses can operate such promotions with contests, games and prizes if a recipient actually wins a prize and the business "makes adequate and fair disclosure of the number and approximate value of the prizes or benefits, of the area or areas to which they have been allocated and of any fact within the person's knowledge that materially affects the chances of winning, By now, readers may be wondering "how do promotions such as 'Roll Up the Rim to Win' pass muster with this general prohibition?" The answer is found in the general exception. distributes the prizes or benefits without unreasonable delay; and selects participants or distributes the prizes or benefits randomly, or on the basis of the participants' skill." (s. 53(2))

If you have not heard of any convictions under this provision of the *Competition Act*, it is because there really have not been any of note. These rules, however, can also be used as a basis for civil claims and at least one class action settlement under this provision was approved (*Speers v. Reader's Digest*, 2010 ONSC 6366 [5]).

Canadian Anti-Spam Legislation (CASL) [6]

Many business promotions are communicated to the public as spam messages. Since July 1, 2014, this legislation endeavours to protect Canadian consumers from spam and to increase the confidence of Canadians in the use of electronic commerce. This new legislation creates an offence to knowingly make false or misleading statements and provide false or misleading information. Any message sent by electronic communication must be received with consent, must clearly identify who sent the message, must allow the recipient to contact the sender (contact information must remain valid for at least 60 days), and permit an unsubscribe option where opting out can be done at no cost and up to at least 60 days later. Opt out requests must be processed within 10 days.

The law adopts an opt-in approach that requires a positive and explicit expression of consent for each new commercial electronic message. No longer will marketers be able to pre-check a box to receive messages or bundle consent with general terms and conditions of sale. The law also prohibits false or misleading subject lines or sender information. (Editors Note: The Centre for Public Legal Education has published a set of [FAQs about CASL](#) [7].)

Personal Information Protection and Electronic Documents Act (PIPEDA) [8] and Privacy Act [9]

This federal legislation regulates the collection of personal data for marketing purposes. It applies to provinces other than Alberta, British Columbia and Quebec that have passed substantially similar laws. Subject to some exceptions, organizations may only collect, use and disclose personal information once they have notified the subject individuals of the purpose of the data collection and received meaningful and informed consent from them. In addition, personal information can only be collected, used or disclosed for purposes that are reasonable and only to the extent necessary to fulfil those purposes.

Likewise, the *Privacy Act* can also come into play with the law of contests, prizes and games because most times you will be asked to provide personal information upon entering a contest or winning a prize. Under section 5, the Act states that the individual must be informed as to why the information is being collected. Under section 6, the information that is collected must only be used for its intended purpose; otherwise, the individual must consent to additional uses.

Provincial Legislation

In addition to federal criminal and competition legislation, the provinces prohibit unfair and deceptive trade practices which can include dishonest commercial contests, games and prize promotions. Almost all of these provincial statutes deem certain commercial tactics as illegal trade practices. These include taking advantage of consumers, using high pressure or undue influence, and resorting to ambiguous, exaggerated or deceptive facts in promotion. All of these tactics can come in the form of contests and prize promotions.

It is also an unfair practice to knowingly deceive or mislead the consumer, represent sponsorships, affiliations, or benefits that are not true and that the product or service does not have. In addition to federal criminal and competition legislation, the provinces prohibit unfair and deceptive trade practices which can include dishonest commercial contests, games and prize promotions. A company also cannot make false or misleading representations or misrepresent the quality or standard of any product or service.

This genre of provincial legislation across Canada is similar in content but goes by different names: the [Alberta Fair Trading Act](#) [10], the [British Columbia Business Practices and Consumer Protection Act](#) [11], the [New Brunswick Financial and Consumer Services Commission Act](#) [12], and the [Consumer Protection Acts of Saskatchewan](#) [13], [Manitoba](#) [14], [Newfoundland and Labrador](#) [15], [Ontario](#) [16], [Quebec](#) [17], [Nova Scotia](#) [18], [Prince Edward Island](#) [19], [Yukon](#) [20], [Northwest Territories](#) [21], and [Nunavut](#) [22] as well as the [Business Practices Acts of Manitoba](#) [23] and [Prince Edward Island](#) [24].

Conclusion: the Case of *Richard v. Time*

While it seems that Canada, through federal and provincial legislation, has in place many safeguards for the consumer when it comes to contests, games and prizes as business promotions, the real test of effectiveness will be found in the enforcement of the regulations and the remedies.

The most prominent recent demonstration of how this regulation works was the case of

[Richard v. Time Inc., 2012 SCC 8 \(CanLII\) \[25\]](#) a case that went to the Supreme Court of Canada under the Quebec provincial consumer legislation.

Richard received a letter referred to as an "Official Sweepstakes Notice" in the mail from *Time* magazine. Several attention-grabbing, exclamatory sentences in bold uppercase letters suggested he had won a cash prize of U.S. \$833,337, were combined with conditional clauses in very small print, some of which began with the words "If you have and return the Grand Prize winning entry in time." The back of the letter informed Richard he would qualify for a \$100,000 bonus prize if he validated his entry within five days. The reply coupon offered Richard the opportunity to subscribe to *Time* magazine. Believing he would receive the promised amount, Richard immediately subscribed to *Time* magazine and returned the reply coupon. He received no money because he did not have the winning entry for the draw. The whole package, they explained, was only an invitation to participate in a sweepstakes.

The Supreme Court of Canada unanimously agreed that the test for false or misleading advertising is "general impression": the one a person has after an initial contact with the entire advertisement. The average consumer here would have been under the general impression that Richard held the winning entry and had only to return the reply coupon to initiate the claim process. The Court said it "was riddled with misleading representations" and had "fraudulent effect."

As for legal remedy, the Court compensated Richard for moral injuries in the amount of \$1,000 and punitive damages of \$15,000. For a more detailed examination of this case, please see ["Turning a Loss into a Win" by Stephanie Laskoski \[26\]](#).

This recent judicial decision reminds us that legislation is often mightier on paper than it is in action. The best law of consumer protection in commercial contest, game and prize promotions may often simply be to discard the promotion.

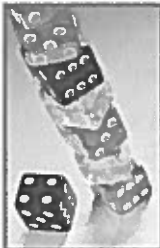
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Act?

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URLs in this post:

- [1] Image: http://www.lawnow.org/wp-content/uploads/2014/09/contest_small.jpg
- [2] *Criminal Code*: <http://canlii.ca/t/7vf2>
- [3] *Criminal Code* (s. 201 – 209): http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#Gaming_and_Betting__702694
- [4] *Competition Act*: <http://canlii.ca/t/krnt>
- [5] *Speers v. Reader's Digest*, 2010 ONSC 6366: <http://canlii.ca/t/2dfwq>
- [6] *Canadian Anti-Spam Legislation (CASL)*: <http://canlii.ca/t/l294>
- [7] FAQs about CASL: http://www.law-faqs.org/wiki/index.php/Canada_Anti-Spam_CASL
- [8] *Personal Information Protection and Electronic Documents Act (PIPEDA)*: <http://canlii.ca/t/l29k>
- [9] *Privacy Act*: <http://canlii.ca/t/527pv>
- [10] *Alberta Fair Trading Act*: <http://canlii.ca/t/522q8>
- [11] *British Columbia Business Practices and Consumer Protection Act*: <http://canlii.ca/t/5224h>
- [12] *New Brunswick Financial and Consumer Services Commission Act*: <http://canlii.ca/t/5287q>
- [13] Saskatchewan: <http://canlii.ca/t/hxnd>
- [14] Manitoba: <http://canlii.ca/t/52971>
- [15] Newfoundland and Labrador: <http://canlii.ca/t/526qz>
- [16] Ontario: <http://canlii.ca/t/524vt>
- [17] Quebec: <http://canlii.ca/t/51v54>
- [18] Nova Scotia: <http://canlii.ca/t/524l2>
- [19] Prince Edward Island: <http://canlii.ca/t/51vqp>
- [20] Yukon: <http://canlii.ca/t/kfpg>
- [21] Northwest Territories: <http://canlii.ca/t/lg6x>
- [22] Nunavut: <http://canlii.ca/t/51wrj>
- [23] Manitoba: <http://canlii.ca/t/5296x>
- [24] Prince Edward Island: <http://canlii.ca/t/51vq9>
- [25] *Richard v. Time Inc.*, 2012 SCC 8 (CanLII): <http://canlii.ca/t/fq9tg>

[26] "Turning a Loss into a Win" by Stephanie Laskoski: <http://www.lawnow.org/turning-loss-win/>

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