

CANADA

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Is there case law or any statutory regulation governing advertising and promotion incentives? Are there any special consumer protection laws? What role do free gifts, tie-in offers, sweepstakes, rebates and other benefits, play in this context?

Advertising in Canada is governed by a number of federal acts including the *Competition Act*, the *Food and Drugs Act*, the *Consumer Packaging and Labelling Act*. In addition, each province or territory generally has its own consumer protection legislation governing the sale of goods and services. Certain jurisdictions also have a range of product-specific advertising codes such as those for alcohol and financial services.

A product or service offered “free” with the purchase of another product (e.g. a free gift or tie-in offer) must be offered without hidden costs such as an increase in the cost of the product/service being purchased. The offer must clearly state that the purchase of the other product is required to get the free product or service. Similarly, where a bonus item is offered with the purchase of another item, (e.g. “Included”/“No Extra Charge”/“Bonus”), the price of the purchased item should not be reduced if the purchaser refuses the bonus item (nor can the price of the purchased item be increased by the cost of the “bonus” item).

Sweepstakes and contests are regulated by both the *Competition Act* and the *Criminal Code*. Under the *Criminal Code* it is an indictable offence to dispose of property by any mode of chance alone. Thus, prudent contest organizers require that a skill test be administered to potential winners, making the contest a game of mixed chance and skill. Meanwhile, the *Competition Act* requires that one disclose certain minimum contest details and not unduly delay the awarding of prizes. The Competition Bureau requires that the disclosures to be made in a reasonably conspicuous manner prior to the entrant being inconvenienced or committed to the contest.

In Quebec, the *Act Respecting Lotteries, Publicity Contests and Amusement Machines* also requires contest sponsors to meet filing and bonding requirements for publicity contests open to Quebec residents. Depending on the value of the prize and identity of the contest organizer, these may include registering the contest rules, paying fees and submitting contest advertising prior to the contest’s launch, as well as furnishing security to the Régie des alcools, des courses et des jeux based on the prize value available to Quebec residents. At the end of such a contest, the organizer may also need to report the winners to the Régie and account for any unawarded prizes.

In your jurisdiction, are there any industry sectors which are subject to special regulations for advertising and promotion incentives (for instance the health products and pharmaceutical industries in some countries)? Please name applicable statutes and self-regulatory codes.

Alcoholic beverage advertising is regulated through various provincial codes, licensing requirements, and provincially run store advertising requirements.

For tobacco products, the *Tobacco Act* prohibits virtually all tobacco advertising/promotional activity with the exception of “information” and “brand preference” advertising in publications or places where young people are not permitted by law, and under certain conditions. No tobacco sponsorship (signage) advertising is permitted. There are numerous other restrictions including the prohibition against offering/providing any consideration direct or indirect for the purchase of a tobacco product including a gift to the purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, lottery or contest. Tobacco packages must bear text and visual health hazard warnings.

Financial services industry advertising is also regulated at the provincial level through cost of credit disclosure requirements and other consumer protection legislation.

Food, Natural Health Product, Cosmetic, and Drug advertising are all regulated by the federal *Food and Drugs Act*.

In addition to industry section regulation, there are various advertising-related requirements imposed upon

transactions by virtue of their form. For example, telemarketing and other remote agreements are regulated by various provincial statutes, and there are similar requirements for internet-based agreements.

Does industry self-regulation replace or supplement government and legislative regulation of advertising and promotion incentives? Is self-regulation an effective tool?

Industry self-regulation supplements government and legislative regulation of advertising and promotion incentives. Advertising Standards Canada ("ASC") is the advertising industry's national self-governing body in Canada. It pre-clears broadcast ads for food, natural health products, cosmetics, alcohol and children's advertising (and it preclears both broadcast and print ads for consumer drugs). It also administers the *Canadian Code of Advertising Standards*, the *Broadcast Code for Advertising to Children*, *Gender Portrayal Guidelines* and conducts confidential trade dispute hearings and responds to consumer complaints. The Canadian Marketing Association also publishes a *Code of Ethics* that governs its members and provides an industry standard. While self-regulation is generally an effective tool in Canada, government regulators will get involved where the public interest merits intervention.

To what extent do promotional incentives extended to staff in public institutions pose legal issues in your jurisdiction (i.e., paying for travel and accommodation costs on the occasion of conferences, personal entertainment, hidden education sponsoring, sponsoring of school snacks for promotional purposes)?

Promotional incentives extended to staff in public institutions can pose a number of legal issues in Canada. For example, there are prohibitions on staff at public institutions accepting free gifts (including paid travel and accommodation) in a number of jurisdictions that include various federal, provincial/territorial, and municipal governments. There are also lobbying statutes at various government levels that require the registration of all lobbying activities.

In Quebec, there is also a prohibition on advertising to children under the age of 13 (with few exceptions) and school board approval is required for any in-school promotion.

Are there any formal disclosure requirements for promotional incentives (i.e., rule of separation of procurement from personal dealings, rules of employer consent requirements, written form requirements, adequacy of consideration granted for a service)?

The *Criminal Code* contains a provision against "secret commissions", which includes providing any reward, advantage, or benefit of any kind to an agent or employee, as consideration for doing or not doing any act relating to the affairs or business of the agent or employee's principal. In addition, there are various procurement and conflict of interest requirements that exist in various jurisdictions and in various levels of government.