

## CANADA



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1. Legislation	
<b>Topic:</b>	Natural Health Products ("NHP") Regulations
<b>Who:</b>	Federal Government NHP Directorate ("NHPD")
<b>When:</b>	January 1, 2004
<b>Where:</b>	Ottawa
<b>What Happened:</b>	<p>The <i>Natural Health Products Regulations</i> ("NHPR") to the <i>Food and Drugs Act</i> came into effect on January 1, 2004 and several Guidance Documents have been published. The NHPR regulate the licensing, labelling, importing, sale, manufacturing and testing etc of NHPs (including herbal and homeopathic remedies, dietary supplements, mineral and vitamin supplements) in Canada. The NHPD's Enforcement and Compliance Guidance Document included several surprises as follows:</p> <p>Many makers of isolates, amino acids, fatty acids, concentrated volatile (essential) oils indicated for internal use and extracts (other than those prepared by traditional methods), were surprised to find that they must apply for a product license by <b>December 31, 2004</b>. Deadlines for other substances, categorized by their perceived risk, range from June 1, 2004 to January 1, 2007,</p> <p>The NHPD also unexpectedly took the position that some cosmetic-type drugs such as fluoride toothpaste, antiperspirants and medicated shampoos, that have drug identification numbers under the drug regime, are NHPs because they contain minerals or natural-based active ingredients (assuming they also make a health-type).</p> <p>Industry is concerned that these NHP requirements will be more onerous than the current drug regime. . Various industry associations are requesting the government to maintain the status of these products as drug products, and not treat them as NHPs.</p>
<b>Comments:</b>	The NHP regime is starting to look more onerous in some respects than the drug regime (of which it is a subset). As no NHP applications have been processed yet, it is too early to say just how smooth (or bumpy) the process will be in practice.

2. Legislation	
<b>Topic:</b>	Bill S-2 <i>An Act to prevent unsolicited messages on the Internet</i>
<b>Who:</b>	Federal Government
<b>When:</b>	September 2003
<b>Where:</b>	Ottawa
<b>What Happened:</b>	Bill S-2, calls for an Internet Consumer Protection Council on which ISPs must be members. The Council will establish standards, including those for spam filters that will apply to its members and a "no-spam" list. "Spam" is defined

	<p>as 1 or more unsolicited messages transmitted via the Internet, excluding messages from a sender with whom the recipient has a pre-existing commercial or personal relationship.</p> <p>Any spam received by a person in Canada would be deemed to be sent in Canada regardless of where the message originated. Offences target both the spam sender and the ISP. Offences include: <i>sending</i> spam <i>without</i>: identifying it as such; showing the senders' address; including an opt-out message; determining the recipient is on a "no-spam list"; showing the identity of another party on whose behalf the spam is sent. Other offences include sending spam containing false statements re: goods/services offered in the message or about the sender's identity.</p> <p>It is an offence for an ISP: to be an accessory to any of the above offences; to fail to install a spam filter in accordance with the Council's standards; to fail to use "reasonable efforts" to stop spam from reaching its customers; to provide false information to the Council or Minister re: the Internet or this the administration of this legislation. Penalties run from \$500 to \$5,000 and/or imprisonment, the higher penalties being for emails targeting children and emails with offensive (child pornography etc)/ fraudulent content.</p>
<b>Comments:</b>	There is some concern that the proposed legislation will not effectively deter spam and may not permit the sending of commercial messages to someone with whom the sender has no previous commercial relationship. While this Bill may die if an election is called, likely it will be re-introduced in a new session of Parliament and may undergo further changes.

<b>3. Case Report</b>	Government Enforcement
<b>Topic:</b>	Prepaid Long Distance Phone Card Advertising
<b>Who:</b>	Federal Competition Bureau
<b>When:</b>	March 2004
<b>Where:</b>	Canada
<b>What Happened:</b>	The Competition Bureau reached a settlement via a Consent Agreement with Telresolve Inc., which sells prepaid long distance phone cards. Promotional advertisements for prepaid cards were posted at several retail outlets containing misleading claims about per-minute charges, other fees and the number of minutes available on the card. Under the Consent Agreement, Teleresolve will pay an administrative monetary penalty of \$750,000 and provide a 50% credit of the value of all WOW and LILY cards with proof of purchase.
<b>Comments:</b>	The financial penalty is significant and reflects the Competition Bureau's resolve to aggressively pursue misrepresentations in the prepaid calling card industry.

<b>4. Case Report</b>	
<b>Topic:</b>	Class Action Lawsuit Concerning Video Lottery Terminals
<b>Who:</b>	A group of Quebec gamblers vs. Loto Quebec
<b>When:</b>	2003
<b>Where:</b>	Quebec
<b>What Happened:</b>	The class action claims compensation of \$ 700,000 for about 119,000 VLT addicts for addiction counselling and legal fees. The claimants allege that Loto Quebec, as operator of the VLTs, failed to warn users of the risks and to inform them of safety precautions.

	Similarly, there are several lawsuits against the Ontario Lottery and Gaming Corporation for \$1 million and \$7 million respectively for casinos' failure to enforce their own self exclusion plans. The plaintiffs had asked to be barred from entry when they realized they had a gambling problem but the casino failed to prevent them from entering, gambling and losing significant amounts of money.
<b>Comments:</b>	These cases, join the "Big Tobacco" and big fast food cases in determining the extent to which courts will be used to protect people from themselves.

<b>5. Case Report</b>	
<b>Topic:</b>	Quebec Language Law
<b>Who:</b>	Office de la Langue Française ("OLF") and Bell Canada
<b>When:</b>	2003
<b>Where:</b>	Quebec
<b>What Happened:</b>	Bell Canada ran French ads in Quebec using the English word, "full" which is commonly used by francophone adolescents in Quebec to mean, "completely". The OLF swiftly issued a communiqué denouncing the use and emphasizing that beyond the <i>Charter of the French Language</i> , advertisers have a special responsibility with respect to the language they use. Evidently many Quebecers agreed because they burned up the talk show phone lines expressing their strong objection to the use of such language by advertisers. Even though the use of English can be legal (English trade marks where no French equivalent is registered), Quebecers' sensitivity to English words can still result in expensive and PR debacles. The GAP discovered this when it pulled its ads containing the English wording "First Scratch" which though legal, being (properly trade marked), met with numerous complaints.
<b>Comments:</b>	The Bell and GAP examples illustrate the need to be aware of Quebecers' sensitivity to and strong reactions against the use of English in advertising in Quebec.

<b>6. Case Report</b>	
<b>Topic:</b>	Billboard Ad: Unacceptable Depiction and Portrayal
<b>Who:</b>	Advertising Standards Canada
<b>When:</b>	2003
<b>Where:</b>	Saskatchewan
<b>What Happened:</b>	A billboard ad for a radio station showed a woman from the back focusing on her buttocks and skimpy underwear. One of her hands rested on a guitar with the wording, "Now turn us on". After receiving complaints, the ad was modified by placing the wording, "Censored" over the buttocks in the picture. ASC found both the original and modified ads were offensive and demeaning to women. It found that entertainment programming differs from commercial advertising. While audiences may select a radio or a TV program over another, they have no choice over billboard advertising which often reaches people outside the target market. While the main audience for this radio station was men who would likely find an attractive woman appealing, this did not justify objectifying women by using suggestive poses and copy. By drawing attention to the woman's physical attributes and implying that she turns listeners on, the ad had the effect of sexually objectifying, demeaning and degrading women.