LEGAL CONSIDERATIONS WHEN RUNNING A CONTEST

Melissa Timbres
Area of Coverage - Privacy, Business

Many organizations use promotional contests to seek to attract interest to their organization or event. However, they can be taken by surprise with the legal requirements that need to be considered in order to run a legal contest in Canada.

This article is not meant to replace legal advice when running a contest, as each situation is unique and will dictate how the contest should be legally structured. Rather, this article provides an overview as to the legal considerations at play.

The Basics - Criminal & Competition Law

The key laws governing contests in Canada are found in section 206 of the Criminal Code and section 74.06 of the Competition Act (note: the province of Quebec has further statutory requirements).

The Criminal Code

The Criminal Code prohibits a promotional contest that determines the winner purely by chance. If, however, a contest is determined by mixed chance and skill or by skill, it may be in compliance.

If a contest is to be determined by mixed chance and skill, there is a further requirement that contest participants are not to pay money or give some other form of consideration in order to enter into the contest. As such, the contest rules should clearly stipulate that no purchase or consideration is required to participate or enter into the contest.

In terms of introducing an element of skill into a contest of mixed skill and chance, the prevailing way of achieving this requirement is by having a time limited skill-testing question contemplated in the rules. Typically this requirement is met by requiring the contest winner to correctly answer a time-limited, mathematical equation.

There are penalties for not complying with Criminal Code. An indictable offence punishable by prison for a term not exceeding 2 years can result, or the court may proceed by way of summary conviction punishable by a fine not exceeding $25,000.00.

Competition Act

A contest may be legally sound under the Criminal Code, however it will also need to comply with the Competition Act. The main impact of the Competition Act on contests relates to whether there has been fair and adequate disclosure with respect to the contest.

Based upon the requirements pertaining to contests in the Competition Act, a party conducting a contest will need to consider and have elements in the contest rules that address the following:

- the number and approximate value of the prize;
- the regional allocation of prizes, if applicable;
- any fact within the knowledge of the contest sponsor that materially affects the chances of a contest participant winning;
- the requirement that the contest participant needs to correctly answer a skill-testing question;