

BCYCNA IS DEDICATED TO INDUSTRY EDUCATION

# WEDIV GUIDE MEDIA GUIDE WEDIV GUIDE



**Community  
Newspapers  
Association**

British Columbia & Yukon



## 2015 Edition



**Tim Shoults**  
*BCYCNA President*

The BCYCNA is a non-profit membership organization representing community newspapers throughout British Columbia and the Yukon.

We've existed as an organization since 1922, and today we boast a membership of 119 newspapers, with a combined readership of more than 2 million. The smallest newspaper circulates less than 1,000 copies each week, and the largest, more than 100,000.

Our members reflect the images, thoughts and everyday happenings of the communities they serve. While these communities may vary in size, from tiny, isolated locations to bustling suburban centres, they share one important feature – a strong community newspaper.

These newspapers deliver more than the news. The information they deliver provides readers with a sense of pride, a sense of identity and a sense of belonging.



### Author Bios

David F. Sutherland has a BA(hons) in English Language and Literature (UofT) 1975 and an L.L.B. (UBC) 1979. David articulated to Lance Finch (then future Chief Justice of BC) and juniored him for four years. Since then, David has practiced civil litigation with a special interest in freedom of speech. He is listed in Best Lawyers in Canada

regarding Defamation and Media Law. He has argued defamation and media cases at all levels of Court in Canada. He lectures and writes frequently, for example for the Law Society of BC, the Webster Foundation, numerous media organizations and the BC and Yukon Community Newspaper Association. He represents and advises LGBT media, governments including a variety of First Nations, and Unions but mostly for numerous print, broadcast, and cyber news media. He spent nine years on the Board and six years on the executive of the BC Civil Liberties Association - during which time he did not miss a meeting. David is the Chairman of the Board of Lawyers' Rights Watch Canada, an NGO with special consultative status with the Economic and Social Council of the UN. <http://www.lrwc.org/about/>

Vincy Cheung graduated from the University of British Columbia with a Bachelor of Arts degree in English Literature. She spent three years in Tokyo, Japan teaching English to business students and junior high school students.

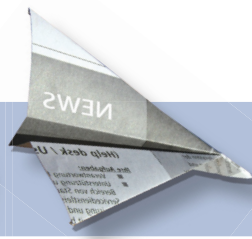
After returning to Vancouver and a short stint in the financial industry, Vincy decided to pursue a paralegal designation. Vincy joined David F. Sutherland & Associates in 2013 and graduated from the Vancouver Community College Paralegal program in early 2015. She enjoys the challenges and learning opportunities of working at a small litigation firm.

# index

Preface .....	2
Copyright .....	3
Requirements for Copyright Protection .....	4
Uses by Newspapers of Copyright Material .....	4
Term of Copyright Protection .....	4
What NOT to Do When Gathering Material for Your Reporting .....	5
Court Reporting .....	5
Contempt of Court .....	5
Adult Courts .....	6
Youth Courts .....	8
Youths and Provincial Offence .....	10
Reporting on Child Welfare Proceedings .....	10
Defamation .....	14
Preparing your Report for Publication .....	14
Pre-Publication Lawyering .....	16
Third Party Content .....	16
Your Special Rights to Correct Errors .....	17
Protecting your Special Rights .....	18
Libel Suit .....	20
Reporters' Notes .....	23
Advertising Alerts .....	24
Copyright in Advertising .....	24
Tobacco Advertising .....	24
Alcohol Advertising .....	25
Marijuana Advertising .....	29
Elections .....	30
Municipal Government Advertising .....	33
Major Sporting Franchises .....	34
Reproducing Money .....	36
Mortgages, Loans and Financial Services .....	37
Advertising of Taxes .....	39
Auto Advertising .....	40
Promotional Contests .....	42
Gambling, Including Online .....	44
Multi-level Marketing .....	44
Satellite Dish Advertising .....	45
Surrogate Mothers .....	45
Sale of Firearms .....	46
Wildlife Advertising .....	47
Accommodations .....	48
Employment Advertising .....	49
Identity Theft .....	51
Misleading Ads .....	52
Sale of Cemetery Plots .....	52



# preface



## preface

This media guide is the result of the professionalism and the dedication for continual education of all of those that work at many community newspapers. It is their questions about what can and cannot be printed or posted on websites that led to the compilation of this booklet, and the development of the collected knowledge and experience included. It is no exaggeration to state that the information in this book derives from the curiosity, attention to detail, professionalism, and dedication of:

- a) publishers
- b) editors
- c) reporters
- d) advertising executives and staff

at the many community newspapers in British Columbia that serve their communities with careful attention to the sorts of issues addressed in this guide and the many other issues that communities and community newspapers encounter.

Please note that this media guide is not a legal document, but it is intended for information and referral purposes only. When dealing with matters for publication in a newspaper, always refer to the most recent version of the associated guidelines or legislation and consider seeking the advice of your lawyer for interpretation. Links to associated reference material are provided for all advertising topics.

In general, never assume the person or business placing an ad knows or understands what they are allowed to do or what they are legally obligated to do. Similar caution is advisable respecting letters-to-the-editor and hosted comments on your website. When issues occur, liability will probably adhere to the advertiser or third party. However, in some circumstances the newspaper or website will also have responsibility and, in any event, it is good business practice for newspapers and websites to advise advertisers of legal constraints and keep their customers clear of participation and infraction. Knowledge assists both customer service and protection of the newspaper from possible liability. It is necessary to question your advertisers, in many instances, because ignorance is often not a defense. Due diligence on your part will be taken into consideration if there is an issue and some record keeping is advisable.

Newspapers have the right to refuse advertising. So do websites. In respect of editorial content, journalists are free to choose what is published and journalists universally refuse to submit their content to prior approval.

This media guide is modeled upon and loosely reflects a similar document published in 2013 by the Ontario Community Newspaper Association. That association takes advice from media lawyers, Stuart Robertson and Douglas Richardson of the Toronto law firm of O'Donnell, Robertson & Sanfilippo, well-known Toronto media lawyers who represent many Ontario Community Newspaper Association members as well as others. The Ontario Community Newspaper Association and messieurs Robertson and Richardson have explicitly provided permission to the authors of this guide to rely upon and shamelessly copy useful portions of the earlier Ontario document. Working from that Guide, in some respects, British Columbia media lawyer, David F. Sutherland, and a paralegal working with him, Vincy Cheung, have developed this guide at the request of George Affleck, Executive Director of the British Columbia and Yukon Community Newspaper Association.

This guide is current to March and in some respects April of 2015. If member newspapers encounter subjects, from time to time, wherein this guide should be updated, input would be most gratefully received by the Association and might be incorporated in an online updated version of this Guide for members to use.

Feel free to contact the Association at:

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# copyright

Copyright is a monopoly granted by federal statute in Canada to the creator of original literary, dramatic, artistic or photographic works. Copyright is owned by the creator's employer if the creation arises during the employment. If the creator is an independent contractor, or freelancer, copyright is owned by the creator and not the customer. Copyright can be sold in whole or in part (often in the form of a licence to publish one time or for a period, in a medium, in a geographic area by hard copy, etc.). Copyright can be divided by contract.

The owner of copyright controls what use can be made of the work for a period of time. When that period lapses, the work goes into the public domain at which point anyone can use it.

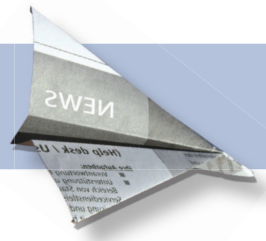
Currently, copyright lasts the life of the creator, or if a collaboration, the life of the longest-living creator, plus 50 years. However, copyright is entirely a creature of statute, being federal legislation. It is different in each country. Currently, there is an international movement apparent in the US, the UK, and Europe to increase copyrights to the life or lives plus 70 years, possibly as a result of lobbying by Disney. It is expected that Canada will fall into line and extend copyright to the life of the last living creator plus 70 years.

The creator of an article, column, letter to the editor, ad, photo, cartoon and even the newspaper or website design is the owner of the right to reproduce it, unless the creator made it within the context of her/his employment. As a result, staff writers and photographers do not own the copyright of their work, but the employers do. Freelancers are free to negotiate with the newspaper for the right to reproduce their work in the newspaper and on the newspaper's website. (BCYCNA has sample Freelance Agreements available.)

In Canada (but not for example the US), in addition to copyright, the creator has moral rights, which are rights to protect, and vindicate the integrity of a work. The classic case is the moral right to prevent a work being distorted and made a mockery. Moral rights can be waived by the creators in contract for a price but they cannot be assigned or sold.

## **Sometimes Confusing:**

- It is often thought that the advertiser owns the copyright in the ad created under contract with a production house or by the creative department of the newspaper. Wrong. The first owner of the copyright is the company or person who created it. And so if an advertiser brings a print-ready ad to your newspaper, do not use it without first addressing the issue as to whether the advertiser owns the rights in the ad sufficient to authorize you publishing it. Often the advertiser may think it owns the copyright, but it does not.
- It is often thought that letters to the editor can be published as the editor sees fit. Not true. The letter writer owns the copyright and by sending it to the editor it can be inferred that the author has given a licence to the newspaper to publish it as a letter to the editor where such letters normally appear, subject to any conditions set out by the newspaper on its website or in its pages.
- It is often thought that a government document can be published because it was made with public money. Wrong. Government documents are most often created and protected by Crown copyright – i.e. the government owns the copyright in the work and you must obtain the right to publish it if you intend to publish it (but see “news exception” below).
- It is often thought that when an article appears on the Internet, it is a fair use to publish it because it is in the public domain. Not true. Somebody owns the copyright in the article and it may have been placed on the Internet for anyone to use. But something on the page should make it clear that you can publish the article before you do so – i.e. a licence for you to use it. Examples of this are press releases – where it is very clear in the circumstances that it is available specifically for your use as a publisher. But if there is no such clear indication that you can use something on the Internet, you should consider how you might go about using the article while respecting the copyright of its owner. Does your use fall within an exception, or do you need a licence?
- It is often thought you cannot protect a news story because no one owns the news. It is true that no one owns the news, but anyone or any company can protect her/his/its way of telling the news by relying on the law of copyright.



## Requirements for copyright Protection

A work (text, illustration or photo) will attract copyright protection if it is an original work – i.e. there is an element to it that is genuinely original. Secondly, the work must be reduced to some permanent form – written, taped, recorded that can be mechanically reproduced. A mere statement by a person in an interview, for example, does not by itself attract copyright protection. It must be written or recorded and can be protected in that form. The work must be first published in Canada or in a country that is a party to an international copyright treaty or convention that Canadian law recognizes.

Nothing formal needs to happen to declare ownership of copyright – no registration, no statement of ownership such as by using '©' or the year of creation. Copyright attaches directly and automatically to any original work.

Any transfer of an interest in copyright should be in writing.

## Uses by Newspapers of Copyright Material

A newspaper can quote from copyright works and reproduce visual images in the following situations:

- When the copyright work is itself the news – eg., showing a photo of a painting that was purchased by the National Art Gallery, showing a cartoon or magazine cover that is itself the subject of a public dispute or debate, reporting on a letter or note that resulted in some significant news event. You must indicate the source of the work and the author (if given in the source).
- When the quote is part of a criticism or review of the original work – but the quote must only be a relatively minor element of the original literary work. You must indicate the source of the work and the author (if given in the source).
- When the work is a sculpture or architectural work maintained and photographed or depicted in a public place
- When the quote is from a public lecture and the newspaper is reporting on it (so long as there are no notices at the event preventing such publication) – the quote can consist of any amount or even the whole of the lecture
- When the quote is from a political speech given at a public meeting and the newspaper is reporting on the meeting – the quote can consist of any amount or even the whole of the speech.

Beyond the foregoing bullets, generally speaking if you want to rely on some copyrighted work to assist you in preparing a news report, you can take the information in it and re-write it using your own way of telling the story. There is no clear rule as to how different your story-telling must be from the original – how many words must be changed. The more it is different from the source work, the more certain it is that your work is an original work that attracts its own copyright protection. Merely changing some punctuation or one word here and there is not sufficient to make your work original.

## Term of Copyright Protection

The effective period of copyright protection starts at the moment of creation and remains in effect for the life of the creator/author plus 50 years. Notice that the term of copyright does not always follow the owner of the copyright. If a newspaper article is written by a freelancer, the freelancer owns the copyright in the article and the term of copyright in it will be 50 years from the end of the year in which the author died or if a collaboration the year the last surviving author died. In the case of an article written by a staffer at a newspaper, or any employee of any company, the term of copyright is also measured from the end of the year of death of the employee/former employee, even though the newspaper owns the copyright.

The term of copyright is based on the life of the creator/author/photographer. Even though a newspaper owns copyright in the articles and photos created by its staff, the term of copyright in each such work is for the life of the creator/author and for a period of 50 years from the end of the year in which that person dies. The term of copyright in articles, cartoons, letters, photos, etc. created by freelancers is the same.

The term is established by the legislation of each sovereign nation and international enforcement is subject to treaty and convention. In Canada, enforcement is available in Superior Courts such as the BC and the Yukon Supreme Courts. Injunctions can be sought.

# What NOT to Do When Gathering Material for Your Reporting

Copyright owners may place their works in a technologically-protected sheath that will defy any copying. Do not try to break through the protections built to keep you out. The fines for breaching such protections are among the most severe under Canadian law.

Also, if you find some material on a website you want to use, you must consider the protections that have been placed on that website that might stop your copying. Some websites don't allow you access unless and until you indicate you are aware of any restrictions and protections placed on the website regarding the use of the content placed on it. If those rules and conditions restrict you from making use of the content, you should abide by that restriction.

## court reporting



## court reporting

### Contempt of Courts

Once a legal matter has gone before the courts, it is improper to interfere with the impartial and fair resolution of the dispute by the courts. Any publication that constitutes a real risk of prejudice to the proceedings can be prosecuted as a contempt of court. There is no hard and fast rule as to what constitutes contempt but there are three important factors to be considered:

- **Jury or judge.** If there is to be a jury then the risk of contempt must be considered. As a "rule of thumb" a criminal case can be tried before a jury, if the charge can, by indictment or summary conviction proceedings, get the accused a sentence of 5 years or more. If the charge can only be punished by fewer years of incarceration, then there is no risk of tainting the jury pool. The accused elects whether to be tried by jury. Prior to the election, cautious journalists assume that the accused will elect a jury trial. Once an accused facing 5 years elects judge alone, there is no need to worry that the accused might re-elect. The accused can only change the election with the permission of crown - never given in BC or Yukon, in our experience.
- **Proximity to trial.** The closer the selection of jurors, the more risk that information published will interfere with the proceeding and be in contempt of court; and
- **Nature of information.** If the nature of the information is likely to have an impact on a potential juror's thinking about the guilt or innocence of an accused then it is more likely to be a contempt of court to publish such information. For example, publishing a report indicating an accused confessed to a crime is likely to have a significant impact on how a potential juror views the guilt or innocence of an accused. The main types of publication that risk contempt for tainting the pool of jurors include
  - a) an accused's confession
  - b) an accused's exculpatory statement about the alleged crime (such as "Bruises on the baby happened when it fell out the window")
  - c) similar fact, such as the accused maimed a previous victim in the same way, in the same context
  - d) the accused's criminal record (unless the fact the accused was at large at the time of the offence is a question of accountability for the court (as to bail) or parole board (as to parole) but you may want to consult a lawyer respecting this exception).

It may help you to consider that each of the forbidden categories (a) to (d) above are subjects that the jury won't necessarily hear. In each case, before the evidence can be presented to the jury, there will need to be a "voir dire" or trial within a trial to establish that the evidence is admissible. You do not want to publish that evidence into the pool of jurors, lest it taint that pool and compromise the fairness of the trial. Media have been fined and charged the full cost of a change of venue for trial in another town. Do not copy American or even eastern Canadian precedent in this regard because BC (and Yukon) are less tolerant than our eastern or southern neighbours.



## Adult Courts

There are three simple rules to follow when reporting on adult court proceedings – be fair, be accurate and don't break any court orders restricting publication.

### FAIR

Being fair means reporting only what happens in the court when the jury is present and when you report an allegation in court, you should report on the reaction by the opposing party to the same allegation. In being fair, you will not interfere with the court handling of the proceeding.

### ACCURATE

Being accurate is being precisely accurate about the charges before the court and the proceedings and testimony without your interpretation.

### COURT ORDERS AND BANS

Courts have the authority to restrict publication of certain elements of a court proceeding in order to protect innocent persons, to protect the identity of police informants, to protect jurors from intimidation and generally where justice demands some restriction on reporting. The following chart indicates the situations in which the court may ban the publication of certain information.

SITUATION	TYPE OF BAN	STATUTE	WHAT IS BANNED
Bail Hearing	Mandatory Order (if asked for by accused) Discretionary Order (if asked for by Crown)	C.C., s. 517	Evidence taken, the information given or the representations made and the reasons, if any, given or to be given by the justice before such time as (a) if a preliminary inquiry is held, the accused in respect of whom the proceedings are held is discharged; or (b) if the accused in respect of whom the proceedings are held is tried or ordered to stand trial, the trial is ended. You can publish the outcome of the hearing- bail granted or denied and terms. We say trial is ended when guilt or innocence is decided - need not wait for sentencing - based on a functional analysis of the purposes of the statute.
Preliminary Inquiry	Mandatory order (if asked for by the accused) Discretionary Order (if asked for by Crown)	C.C. s. 539(1)	Evidence taken at the inquiry shall not be published before such time as, in respect of each of the accused, (c) he is discharged, or (d) if he is ordered to stand trial, the trial is ended (see note above about the end of trial).
Admission or Confession	Ban	C.C., s. 539(2)	Any admission or confession or statement of the same nature tendered in evidence at a preliminary inquiry unless (a) the accused has been discharged, or (b) if the accused has been ordered to stand trial, the trial has ended. (see note above about the end of trial).
When Jury Not Present	Ban	C.C., s. 648	Information regarding any portion of the proceedings at which the jury is not present, before the jury retires to consider its verdict.



Identity of Juror	Discretionary Order	C.C., s. 631	Identity of a juror or any information that could disclose their identity.
Interviewing Jurors or any person providing technical, personal, interpretative or other support services to a juror with a physical disability	Ban	C.C., s.649	Any information disclosed by the interviewee relating to the proceedings of the jury when it was absent from the courtroom that was not subsequently disclosed in open court.
Identity of Complainant or Witness in Sex Offence Cases or Blackmail or Extortion	Mandatory Order (if asked for by the complainant of any age or witness under 18) and Discretionary Order (if asked for by Crown)	C.C., s. 486.4	Any information that could identify the complainant or a witness.
Identity of Complainants/ Witnesses/Justice System Participants	Discretionary Order	C.C., s. 486.5	Any information that could identify the victim or witness or justice system participant (counsel, jury, judge, court officers, etc.).
	Ban	C.C., s. 486.5(9)	Unless the judge makes the order to protect identity of victim, witness or justice system participant, the contents of the application for the order, any evidence taken, information given or submissions made at a hearing for the order, or any other information that could identify the person to whom the application relates as a victim, witness or justice system participant in the proceedings.

How do you know an order has been made and what does it actually ban? These are simple questions that sometimes become difficult to answer. In most provinces in Canada, court orders are not listed for public consumption. You must either be in court when the order is made, or ask the court clerk or counsel if any such order has been made and its precise wording. If the case is sexual assault, courts usually make orders banning the identification of the complainant. In sex charge cases, witnesses under 18 years of age are very likely to be protected from publicity. In these cases at least, you should expect an order to be made and so, if such an order is not obvious to you, ask the court clerk or counsel if an order was made and to notify you of its terms.

There are three kinds of court orders – statutory orders (discretionary), statutory orders (mandatory) and superior court orders. **Statutory orders** – the provincial courts are governed by statute and therefore can only make statutory orders – i.e. where a statute gives specific authority to make an order. The authority in some cases must be exercised (i.e. mandatory) – such as the court must make the order where a complainant in a sex assault case seeks an order banning publication of her/his name. But, if the prosecutor in the same case asked the court for an order banning the publication of the name of the complainant, the statute says the court has the right to decide whether or not such an order should be made in the circumstances (i.e. discretionary). When the court is to consider a request for a statutory order, the media need not be notified in advance. **Superior court orders** – the superior court (and not provincial court) has the inherent jurisdiction to order a publication ban if the court deems it necessary for the proper administration of justice. More specifically, the Supreme Court of Canada has determined that the following test must be met if a publication ban is to be ordered:

- (a) Such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
- (b) The salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.



If the prosecutor or any other party to a superior court proceeding wants the court to ban publishing some elements of a court proceeding, that party should give notice to the media of its application for the publication ban – thereby allowing the media to learn of the possibility of the ban and actually to be able to appear before the court to try to convince the court the ban should not be ordered. Increasingly, provinces, including BC have websites and email notification systems. Notice to the media is not required in the case of mandatory statutory orders.

If you become aware that a party is applying to court to get a publication ban, you could review with your editor the possibility of trying to resist the order. If the party seeking the order has not given advance notice to the media, you could raise that issue with the judge and ask that the application be delayed so your outlet can be given proper notice and the time necessary to get material before the court to argue against the ban or its scope.



## Youth Courts

Youth courts have been established in Canada to try cases involving persons who are at least 12 years of age and under 18. Whatever the charge against the person, he/ she will be tried in a youth court unless raised to adult court. There is a set of provisions in the federal statute governing the youth court structure – and one of the principal provisions is that media reporting of legal proceedings against young persons cannot disclose the identity of the young persons charged with offences or even young witnesses or victims of such alleged offences except in the most severe cases where the accused is convicted of serious and violent crimes.

The following chart explains how the disclosure rules work from the vantage point of the young person accused.

CIRCUMSTANCES OF YOUTH (AGES 12 TO 17)	IDENTIFY OR NOT IDENTIFY	COMMENTS
Police are investigating an incident but have no suspect as yet	Identify	Federal government believes law can be interpreted to mean no identification allowed once the youth is suspected

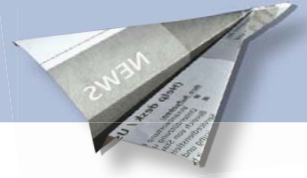




Alleged to have committed an offence and is being sought by police, but is at large	Cannot identify, unless police apply for an order permitting publication. Order in effect for 5 days	
Charged with and being prosecuted for an offence	Cannot identify before conviction – then cannot identify if acquitted; or, if convicted, cannot identify unless one of the exceptions apply – see below	
Suspected of, charged with or convicted of an offence and wants to have his/her name published	Cannot identify unless accused is now 18 years old and not in custody; or if under 18, the youth applies to the court for an order allowing identification and court grants order allowing identification	Once publication occurs after either scenario, then it is lawful for anyone to identify from then on
Convicted of murder, attempted murder, manslaughter, aggravated sexual assault, or of a serious violent offence after third conviction for serious violent offence <b>and court gives an adult sentence</b>	Can identify	Identification can occur from the day the adult sentence is imposed
Convicted of murder, attempted murder, manslaughter, aggravated sexual assault, or of a serious violent offence after third conviction for serious violent offence <b>and court gives a youth sentence</b>	Cannot identify unless Crown asks for the existing ban to be lifted and it is so ordered	

As noted above, even young victims and witnesses of crimes alleged to have been committed by young persons cannot be identified in media reports of the legal proceedings. See the following charts -

CIRCUMSTANCES OF VICTIM UNDER 18 YEARS OLD AT TIME OF ALLEGED OFFENCE	IDENTIFY OR NOT IDENTIFY	COMMENTS
Under age of 18 years at time of intended identification	Cannot identify without the consent of the parents of the victim	Once publication occurs after such consent given, publication by anyone after that is permitted.



18 years or over at time of intended publication	Cannot identify without the consent of the victim	Once publication occurs after such consent given, publication by anyone after that is permitted
Deceased	Cannot identify without the consent of the parents of the victim	Once publication occurs after such consent given, publication by anyone after that is permitted

CIRCUMSTANCES OF WITNESS UNDER 18 YEARS OLD AT TIME OF TRIAL IN YOUTH COURT	IDENTIFY OR NOT IDENTIFY	COMMENTS
Under age of 18 years at time of intended identification	Cannot identify without the consent of the parents of the witness	Once publication occurs after such consent given, publication by anyone after that is permitted
18 years or older at time of intended identification	Cannot identify without the consent of the witness	Once publication occurs after such consent given, publication by anyone after that is permitted

## Youths and Provincial Offence

Most provinces have adopted the simple rule that children should not be identified in any report of a legal process involving a young person accused of breaching a provincial law – such as truancy, careless driving, or a by-law infraction. Alberta, British Columbia, Northwest Territories, New Brunswick, Nova Scotia, Nunavut, Ontario, Quebec and the Yukon have such laws. The definition of “child” varies by province but it is vague in BC. The safe course is not to identify any child before the court or any party respecting a family matter.

## Reporting on Child Welfare Proceedings

Each province has enacted legislation dealing with the protection of children. The laws have traditionally looked at such matters as the use of the authority of the state to place itself in the position of parents where it is necessary to do so. As such, the handling of court proceedings relating to the protection of children is to some extent a confidential matter and not the same as usual court processes that must be conducted in public and with full disclosure.

The following is a chart setting out the restrictions on reporting on child welfare proceedings in the different jurisdictions in Canada.



PROVINCE	STATUTE	BAN
Alberta	Child, Youth and Family Enhancement Act – s. 126.2	(Ban) - any information serving to identify a child who has come to the attention of the Minister under this Act, unless the court specifically orders otherwise
British Columbia	Provincial Courts Act – s. 3	(Ban) - anything that would reasonably be likely to disclose to members of the public the identity of the child or party in a proceeding in court
Manitoba	Child and Family Services Act – s. 75	(Ban) - the name of any person involved in the proceedings as a party or a witness or disclose any information likely to identify any such person
New Brunswick	Child and Family Services and Family Relations Act – s. 10(2)	(Ban) - the name of a child who is or has been the subject of the proceeding or the name of the parent of any child in relation to such proceeding, or in any other way identify the child or his or her parent, without first obtaining leave of the court
Newfoundland	Child, Youth and Family Services Act – s. 50	No ban. But a hearing under this Act shall be held in private, unless otherwise ordered by the judge
Northwest Territories	Child and Family Services Act – s. 87	(Ban) - any information that has the effect of identifying (a) a child who is (i) the subject of the proceedings of a plan of care committee or a hearing under this Act, or (ii) a witness at a hearing; or (b) a parent or foster parent of a child referred to in paragraph (a) or a member of that child's family or extended family



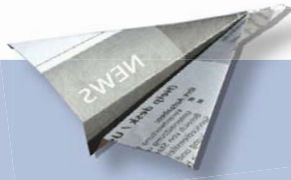


Nova Scotia	Child and Family Services Act – s. 94	(Ban) - any information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child; and/or a report of the hearing or proceeding, or the part thereof
Nunavut	Child and Family Services Act – s. 87	(Ban) - any information that has the effect of identifying (a) a child who is (i) the subject of the proceedings of a plan of care committee or a hearing under this Act, or (ii) a witness at a hearing; or (b) a parent or foster parent of a child referred to in paragraph (a) or a member of that child's family or extended family
Ontario	Child and Family Services Act – s. 45(8)	(Ban) - any information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family; and (Order) - information that has the effect of identifying a person charged with an offence under this Part
Prince Edward Island	Child Protection Act – s. 59	(Ban) - to reveal the identity of a person who makes a report or provides information to the provincial child welfare officers that a child is in need of protection, or to publish information that identifies parties to an agreement or proceedings pursuant to this Act, other than information respecting the child of that person



Quebec	Youth Protection Act – s. 83 (8)	(Ban) - any information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family (Court Order) - information that has the effect of identifying a person charged with an offence under this part
Saskatchewan	Child and Family Services Act – s. 26(2)	(Court Order) - a report of the whole or any part of a protection hearing
Yukon	Child and Family Services Act – s. 173(2)	(Ban) - the name of the child or the child's parent or in which the identity of the child is otherwise indicated shall be published, broadcast or in any other way made public by any person without the leave of the judge





# defamation

## defamation

Defamation is communicating something disparaging about an identifiable person to someone else. It could be published in a newspaper, on the Internet, broadcast, or communicated in conversation. It hurts someone's reputation to say he/she is cruel, uncaring, an adulterer, a liar, a cheat, a fraud artist, a crook, has committed a crime, is incompetent at his/her occupation – the list of words that can hurt someone's reputation is endless.

Under Canadian defamation law, if published in written form (or broadcast) it is libel and any such disparaging information is presumed to be false and its communication is deemed to have caused dollar damages to the person about whom it has been communicated. And so if the person about whom the information is published sues for defamation, it falls to the person or company that communicated it to justify the communication in the circumstances – failing which, the victim of the communication wins the lawsuit.

### Preparing your Report for Publication

So when you are researching, writing and publishing a story for your newspaper or for the Internet, you should be certain that at least one of the following situations apply or could apply should you need to defend it.

- the disparaging words are true, or constitute a fair comment on facts in the article that are themselves true – see TRUTH and FAIR COMMENT below; or
- the information is being communicated in a situation where the public has a proper and democratic right to be informed of it – reporting on public events, courts, legislatures, municipal councils, press releases, press conferences, etc – see REPORTING PUBLIC EVENTS below; or
- the person to whom the disparaging allegation relates consented to the communication – see CONSENT below; or
- the publication is an exercise in responsible communication on a matter of public interest – or it relates to something in which the public has a legitimate and proper interest and your reporting explains the issues from the most objective perspective in the circumstances – see RESPONSIBLE COMMUNICATION ON A MATTER OF PUBLIC INTEREST below.

#### TRUTH

Thinking something is true and proving it so are two very different things. To qualify for the truth defence in defamation, you must be able to prove a fact you published is true with evidence a court will accept that shows your 'fact' is more likely true than not true. The testimony of an eye witness to the 'fact' and/or original documents that demonstrate it are the best examples of evidence you should be looking for if you intend to rely on the truth defence. You should always be leery of evidence that comes from someone who is not directly involved in the matter being reported on – courts call that evidence 'hearsay evidence' and tend not to rely on it when considering the truth of an allegation.

While it may seem strange, truth is a very difficult defence and is seldom relied upon by experienced journalists and editors. There are several key problems with the defence of truth:

- a) The Plaintiff who claims you disparaged him or her gets to plead that your words had a particular "sting" or meaning. If the court agrees your words are capable of that meaning, you are faced with defending words you didn't write or publish, and perhaps words or meanings that you didn't predict the court would find in your words. While the court will decide in advance of trial if the words are capable of the alleged meaning, the Court will not decide the actual meaning until trial, so you don't know the location of the goal-posts until the trial is over.
- b) You need to be sure that your witnesses will repeat what they told you and will be believed at trial two years or more later.
- c) If you try to prove truth and fail, courts sometime say the process aggravates damages, still more than your failure to apologize.

Generally, truth is the last refuge and experienced journalists look elsewhere first.





## FAIR COMMENT

If what you intend to publish is an opinion or a comment, you will need to make certain of the following – (i) the comment must obviously be a comment (using words that make it very clear the statement is an opinion based on facts), (ii) the comment must relate to and be based upon true facts (see ‘Truth’ above) that are in the publication or that are so well known to the readers that putting them in the publication is unnecessary in the circumstances from an editorial standpoint, (iii) the comment is on a matter of real public interest, (iv) the comment is one that a person could honestly hold in relation to the proven facts, and (v) the person making or publishing the comment did not have the dominant motive of intent to harm the person about whom the comment is made nor did the publisher have a reckless disregard for the truth or falsity of the imputation.

If you are to publish a comment, assess each of the above five elements of the fair comment defence. Your editing skills must be used to make certain the comment would clearly be understood to be a comment and not a statement of fact – and that is where the careful use of diction comes in, and you must be careful to ensure that the opinion is apparently based upon true facts set out in the piece.

Comments are defensible even if they are stupid and you don’t agree with them – as long as a person could honestly hold those views. And, of course, they do not have to be proven to be true (because they are comments and not statements of fact).

## REPORTING PUBLIC EVENTS

There are some situations where it is important you tell the public what is going on – such as reports of proceeding in open court or municipal or legislative proceedings, press conferences or press releases and public meetings. In those public situations, something disparaging may be said or implied about someone. You will not incur any liability in defamation law for publishing the disparaging information or quoting the statement if it is communicated as part of a fair and accurate report or synopsis of the event/document. ‘Fair’ in the circumstances means it presents both sides of any matter reported, or if both sides were presented in the public event/document.

You can lose your reporting defence. If a person named in your report is the subject of a disparaging statement and insists you publish her/his contradiction of the report or gives her/his side of the matter and you fail to do so, you lose your right to defend on the basis of this reporting defence. You do not need to publish words given to you by the complainant – you may choose to use your own words to say essentially the same thing.

## CONSENT

A person who agrees that you will publish something about her/him and then sues you for defamation if you do so will not be awarded damages. So it is to your advantage if the person about whom you intend to publish something disparaging tells you it is okay if you publish. The situations in which this might happen are rare, but they occur often enough to make you at least think about pursuing such consent in the appropriate case. The key is that the person must know what you intend to publish in sufficient detail that her/his consent is an ‘informed consent’. The other key element to the consent defence is that you have some record of the consent to the publication in advance – e.g., an audio recording of a telephone call, an e-mail, etc.

It is always a good policy to confront the subject of your coverage – not at the last minute (gotcha) but as early as you can. You never know where this could lead.

## RESPONSIBLE COMMUNICATION ON A MATTER OF PUBLIC INTEREST

There are situations where something is brewing in your community and disparaging things are being said by people involved in some form of dispute. Of course, you have the option of trying to find one of the defences discussed above on which to base your reporting. But there is a new way of looking at such reporting – a new defence created by the Supreme Court of Canada.

If you are satisfied the situation is actually of substantial interest to the public (i.e. people will be better able to vote, protect their families, maintain their health and safety, etc.) and you want to report on it, you will have to be able to show that your reporting is responsible, in that you are diligent in trying to verify the disparaging allegation(s), having regard to all the relevant circumstances. In looking to see what you need to do to publish the story in such a case, you should consider the following:



- a) The more serious the allegation of disparaging conduct or attitude, the more rigorous should be your due diligence in checking the allegation.
- b) In your view the story and the allegation are truly important for the public to be aware of now.
- c) Your source of the information must be one you can reveal if necessary in court and should be reliable.
- d) You must make all reasonable efforts to get the response of the person disparaged and include that response in your story. If they don't call back, keep a record of your call, messages, emails, voicemail, letters. You want to be able to prove that you made all reasonable efforts to get a responsive response. Bear in mind that you will be accused of rushing to print. What was the urgency?
- e) The disparaging allegation is a necessary part of the story and cannot reasonably be left out if the story is to be truly informative to the readers.
- f) It is clear to the readers that the newspaper is not taking sides and that the purpose of the story is to report on the dispute and not to disparage conduct or attitude. The best way to assess this last factor is to be confident a reader of your story will, after reading it, say to her/himself, "I wonder who will turn out to be right in this fight" or "I wonder if it is true."
- g) The Supreme Court of Canada summarized elements to be considered respecting the defence in the following list:
  - A) The publication is on a matter of public interest, and
  - B) The publisher was diligent in trying to verify the allegation, having regard to:
    - a) the seriousness of the allegation;
    - b) the public importance of the matter;
    - c) the urgency of the matter;
    - d) the status and reliability of the source;
    - e) whether the plaintiff's side of the story was sought and accurately reported;
    - f) whether the inclusion of the defamatory statement was justifiable;
    - g) whether the defamatory statement's public interest lay in the fact that it was made rather than its truth ("reportage"); and
    - h) any other relevant circumstances.

## Pre-Publication Lawyering

If unsure whether a story, column, ad, or letter-to-the-editor can legally be published, many newspapers send the piece to a pre-publication lawyer for review and approval.

It is usually most efficient to **send the proposed piece by email or fax**, with a clear indication of the **deadline** by which you want a response.

A wide variety of issues can be the subject of pre-publication review but most consultations stem from concern that coverage may be contempt of court or breach a publication ban, or be libelous and indefensible. In response, the lawyer should provide written confirmation of the advice given, along with reasons that may help you to address similar situations in the future. The written confirmation can be useful in your defence, if you are challenged, charged, or sued.

## Third Party Content

You publish syndicated columns, letters to the editor, ads, online comments, postings, blogs and hot links – all forms of content created by third parties and made available to readers by or through your publishing company. What responsibility do you have for such content?

The general principle is that you are responsible for anything you make available to your readers. The only exceptions are when it is reasonable for the reader to believe you have no responsibility for what is published and there is nothing you can do about it.

**Hyperlinks** in your text are not an adoption of the content to which they link for legal purposes, based upon the Crick case.



**Comments posted online** – The law in Canada is still developing in the area of liability for comments posted online. Operators of some bulletin boards make it clear they monitor the content on the boards and will cull, not publish or remove inappropriate postings. While this approach may give the bulletin board an enhanced credibility, the operators take on liability for the content as far as defamation is concerned. Where, on the other hand, a bulletin board is structured to allow all postings to be viewed without interception, editing or monitoring, the operator is less likely to be fixed at law with liability for the defamatory content unless it has been notified of it. A recent case in BC says that a host has two days to respond to complaint on the facts of that case.

**Take down** – You should be well prepared in advance to deal with allegations of defamatory content on your website because, when it appears, you may have very little time to react and to get it right. When you receive notice, you must immediately review the content, determine in your view if it is obviously defensible and whether or not it is worth keeping on the website in the circumstances. You should act on such a notice as quickly as practicable.

**Releasing names of persons posting comments** – Where possible, you should endeavor to keep some record of who posts comments on your bulletin board or your website. The issue is when and if you disclose the identity. If you say on your website that you won't release names voluntarily, then don't. You must release names if you are ordered to do so by a court. Even if you don't say on your website you will respect confidentiality, it is sound practice not to release the identities unless you are compelled to do so by a court process.

**Letters to the editor** – You are responsible at law for the content of the letters to the editor you receive that you choose to publish in your newspaper – in print or electronic form. Therefore, if there is any statement of fact that might lower the reputation of anyone, you should see whether it is already in the public domain and if not you should consider whether you have any evidence to prove the truth or any of the facts. If not, you should not publish the facts or the letters.

**Advertisements** – You are responsible at law for the defamatory content of ads you publish in your newspaper or on your website. The usual circumstance where defamatory issues arise include comparative claims, defaming competitors, advertorials, advocacy ads on political issues and, press releases or public notices that make defamatory claims such as

- notice that one spouse will not honour the debts of the other spouse
- notice of sale of contents of a storage unit for failure to pay, or abandonment
- notice saying police were looking for an individual
- claim that the advertised product outperforms a named competitor.

These are just a few examples. Before you publish such claims or similar statements, you should check the facts the same way you would in any article or letter to the editor. Frequently, the investigation is more expensive than the price of the ad. Such an ad should be rejected. You can reject an ad, for any reason or for no reason.



## Your Special Rights to Correct Errors

The statutes in the provinces and territories of Canada grant special rights to newspapers in defending defamation claims – especially when something disreputable has been published in error. The legislatures have resolved it is in everyone's interest to have corrections made to erroneous publications that harm people as quickly and effectively as possible. And so, newspapers have been incited to correct their errors as quickly as possible and let those who read the original mistake be properly informed that it was an error. The real benefit to the newspaper in the circumstances is that even though it published a false and defamatory statement about a person, that person cannot be successful in claiming most types of damages against the newspaper if a retraction of the erroneous statement is published on a timely basis in the newspaper in an appropriate place to attract the same readers as those who may have read the initial and erroneous publication.

The newspaper's rights vary between provinces and territories and they can be summarized as follows:



JURISDICTION	LIBEL NOTICE	WHEN TO PUBLISH FOLLOW-UP	TYPE OF PUBLICATION	BENEFIT TO NEWSPAPER
Alberta, Manitoba, Newfoundland & Labrador, NWT, Nunavut, Nova Scotia, Prince Edward Island, Yukon	Yes	Within 14 days of the receipt of the notice	Retraction and apology	No claim against it for general, aggravated or punitive damages
British Columbia	No	Within 3 days of the service of the writ	Retraction	No claim against it for general, aggravated or punitive damages
New Brunswick	No	Before commencement of the action or as soon thereafter as possible	Retraction and apology	No claim against it for general, aggravated or punitive damages
Ontario	Yes	Within 3 days of receipt of libel notice	Retraction	No claim against it for general, aggravated or punitive damages
Quebec	Yes	Within one day following receipt of notice	(a) Retraction and (b) reply tendered by complainant	If (a), no claim against it for general, aggravated or punitive damages. If (a) and (b), no claim for damages
Saskatchewan	Yes	Within 14 days of the receipt of the notice	Retraction	No claim against it for general, aggravated or punitive damages

Where to publish the follow-up – the safest place to publish the follow-up is on the page where the offending item ran, giving it the same prominence as the original item (i.e. same size headline and font). It is usually very difficult to obtain the victim's blessing for the actual appearance of the follow-up publication and so you should discuss the best approach to wording and positioning of the follow-up with your lawyer.

## Protecting your Special Rights

The defamation statutes in all provinces and territories of Canada grant specific rights to newspapers when sued for libel. In most jurisdictions, newspapers have some or all of the following special rights - (i) limited periods in which they can be sued; (ii) the benefit of getting notice of the plaintiff's intent to sue so they can do something about it before a suit starts; (iii) specific defences for reporting on public events; (iv) the crucial right to eradicate claims for most types of damages if they promptly publish a retraction; and (v) the right to have damages against them mitigated by any other award of damages or compensation paid by any other defendants for the same libel. BC newspapers have the benefit of the third, fourth, and fifth





of those special rights. BC papers must list the name of the publisher and the address of the editorial office on the front page or at the head (top) of the editorial page.

These special rights have been granted by the legislatures for two basic reasons – first, newspapers are a vital artery through which the lifeblood of our democratic society flows – freedom of expression; and second, newspapers must be encouraged to correct their errors so the public is disabused of false news on a timely basis on matters of public interest.

In order to qualify for and benefit from these protections, however, the newspaper must publish in every edition the name of the proprietor, the publisher and the address of publication in the newspaper (the 'Notice'), in BC on the front page or at the "head" of the editorials. In Manitoba and Quebec, the newspaper must also publish the identity and location of the printer of the newspaper.

Who is the 'proprietor'? The 'proprietor' of the newspaper is the person or company that actually owns the newspaper operation – employs the editorial staff and provides the physical facility where the editorial staff gathers the information and puts the newspaper together. The name of the company may be different from the name of the newspaper – e.g., the proprietor of The Herald might be 128674 BC Limited. And so in this example, the Notice in BC on the front page or at the "head" of the editorials should identify 128674 BC Limited as the proprietor.

What is the address? The address is the municipal address of the place where the editorial staff puts the newspaper together. It is NOT the mailing address. (Comment – the underlying reason for the requirement for the address is to allow a person complaining of an article to attend at the newspaper and complain or serve a Notice of Civil Claim.)

Where do you place the Notice? Newspapers in the provinces of British Columbia, Ontario, Prince Edward Island and Saskatchewan must place the Notice either (i) on the front page of the newspaper, or (ii) above the lead editorial on the editorial page. There is no requirement that the Notice be of any particular font size. (Comment - the positioning may seem out-of-date or inconsistent with the newspaper's layout and design – but it is a legal requirement nonetheless.)

Newspapers in Alberta, Manitoba, New Brunswick, Newfoundland/Labrador, Nova Scotia, Nunavut and in the Yukon and Northwest Territories must place the Notice "in a conspicuous place". The newspapers in these jurisdictions can interpret this requirement as they see fit. However, "conspicuous" means the Notice must be easily found and must not be hidden.

Newspapers in Quebec must simply place the Notice "some place" in the newspaper.

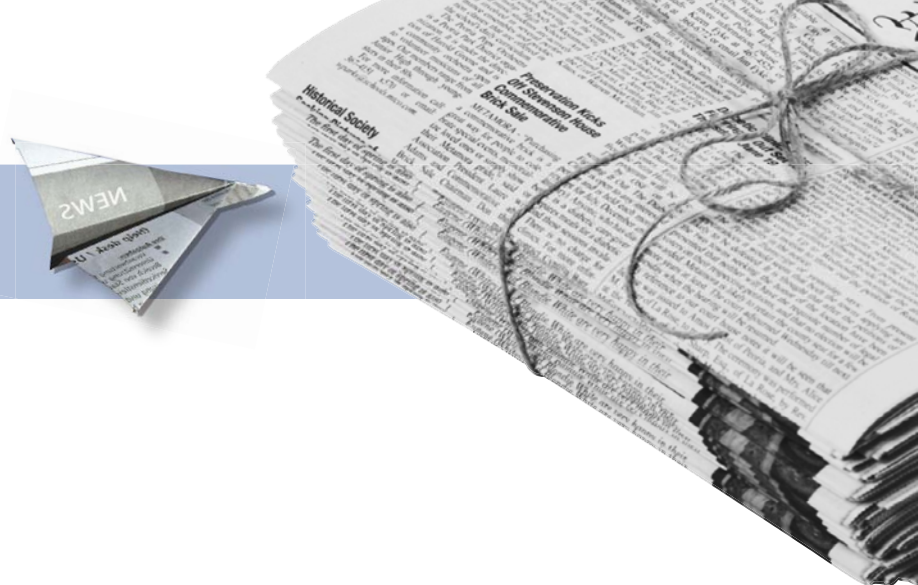
What about your website? The statutes have not yet addressed the issues arising from the advent of the Internet. However, the courts have had to deal with defamation cases in relation to articles published on the Internet and they have ruled the web versions of your newspapers are as much newspapers as the print version for the purpose of the statutory entitlements. And so, for your greatest protection, it is advised you put the Notice on the home page of your website, or on the 'Contact Us' page and make certain it stays there.

And so if your newspaper does not publish the Notice as set out above and it is sued for defamation, you will not be entitled to rely upon the basic newspaper defences – and most importantly you will not be able to benefit fully from publishing a retraction or from mitigating your damages when someone else settles with the plaintiff for the same libel. If you put the Notice in the newspaper or on your website - but in a place other than as set out above - you will probably not be able to convince a court that the positioning of the Notice is sufficient in the circumstances to allow you to benefit from the newspaper entitlements under the statute. Furthermore, the cost in arguing that point might be prohibitively high.





# libel suit

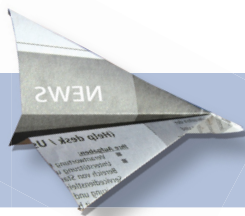


## libel suit chart

PUBLISHER ("YOU")	LEGAL STEPS	COMMENT
<p>1. You receive a <b>libel notice</b> (every province except BC). From the moment of the receipt of such notice – (i) take steps to protect and not destroy any record of the preparation and publication of the publication complained of; and (ii) do not investigate any of the facts on which the complaint is based without first getting legal counsel. Inform legal counsel (when requested) of the details of the service of the libel notice on you. Do not publish follow-ups on the same matter without reviewing them with legal counsel. Notify insurer. Confirm insurance coverage.</p>	<p>Respond as soon as possible if a retraction or apology is warranted (check with lawyer immediately for timing and wording). Lawyer is retained by or with consent of insurer.</p>	<p>Shaking out a complaint is vital – if a mistake has been made. Maybe a (i) letter to the editor, (ii) clarification, or (iii) news update is a better solution and can be negotiated with the complainant in lieu of retraction. Post-complaint investigations can be evidence of malice of the publisher (i.e. "publish now, get the facts later") Follow-up publications and the actions of the publisher and author can alleviate or aggravate the damages suffered by a plaintiff.</p>
<p>2. Receives a <b>Notice of Civil Claim</b>. Gather the documents and notify the staff and author of the suit. Confirm insurance coverage regarding the claims in the legal documents.</p>	<p>Notify Insurer. Usually have 20 days to respond. If more time is required, usually can negotiate an extension of the period for filing a Response. Often the insurer asks legal counsel to prepare a budget and litigation plan for the defence of the claim.</p>	<p>See if – (i) each defendant has been served with the notice (see No.1 above); and (ii) the insurer will cover any defendant in addition to the publisher. Communicate with legal counsel on these issues.</p>
<p>3. State how you will defend the claim within the time allowed under the rules of court. Communicate with and provide</p>	<p>Prepare, serve and file <b>Response to Civil Claim</b> and Affidavit of Documents. Legal counsel must consider</p>	<p>The plaintiff will understand your defence and will see the documents on which you relied in preparing your publication. You</p>



<p>documents to legal counsel. If the words were published and were damaging, usually you want to rely on the best few only of the available defences</p> <ul style="list-style-type: none"> <li>a) privilege</li> <li>b) honest opinion</li> <li>c) truth/fair comment</li> <li>d) consent</li> <li>e) responsible communication and usually not rely on mitigation or innocent dissemination.</li> </ul>	<p>whether you should be counterclaiming against the plaintiff or make a claim for contribution or indemnity from a third party. The decision on such matters is made by the person responsible for the defence of the claim – possibly you, but most usually the insurer.</p> <p>Legal counsel must also determine whether the Notice of Civil Claim needs to be clarified in some aspect if you are to respond to it – i.e. whether you will be demanding particulars of the claim; or whether certain portions of the Notice of Civil Claim should be struck.</p> <p>Once trial is set, for a limited time, either side may serve on the other party a notice indicating the trial will be by jury – i.e. a <b>jury notice</b>.</p>	<p>will see the documents on which the plaintiff will rely.</p> <p>Demanding particulars or deleting portions of the Statement of Claim could take a considerable period of time, but if resolved it will make the process of the case run more smoothly at the discovery stage.</p>
<p>4. Consider your position in light of seeing the plaintiff's claim and documents. Consider the possibility of making a <b>settlement offer</b>. <u>You (or more likely your insurer) can make a settlement offer at any stage in the process up to the time of judgment at trial (if it gets that far, of course)</u></p>	<p>Legal counsel to advise re advantages of making offers to settle.</p>	<p>Making a settlement offer early in the legal process can give to the party receiving the offer a reason to consider whether and to what extent that party will benefit from continuing to fight. Failure to accept a reasonable offer can have consequences in costs and disbursements. Making an offer to settle does not necessarily show weakness. It can be a strong, strategic move to apply pressure on the other party.</p>
<p>5. In superior court, the next step is to examine on oath the other party on its case and documents.</p>	<p>To determine the strategy for questioning the opposing party – i.e. who should go first? where should the discoveries be held? – Set dates for discovery and prepare the witnesses. Must determine and advise re the most appropriate witness to speak for a corporate defendant.</p>	



<p>6. You should consider the benefits in trying to have a <b>mediation</b> of the claim.</p>	<p>Legal counsel to advise whether and when to pursue settlement of the claim through mediation. In some jurisdictions such as BC and the Yukon, mediation is mandatory if anyone wants it.</p>	<p>Mediation does not always result in an agreement to settle the case.</p>
<p>7. Mediation, or trial settlement conference. Take every reasonable effort you think is right in the circumstances to shut the action down and to stop the financial drain.</p>	<p>Legal counsel must prepare documentation which the mediator can use in finding an effective resolution the parties can agree upon.</p>	<p>What transpires in the mediation room stays there. Settlement offers are routinely exchanged in these procedures – again without prejudice to the position of the parties in the action unless settlement is achieved.</p>
<p>8. Prepare to be examined for <b>discovery</b> under oath. Submit to discovery.</p>	<p>Legal counsel will prepare you for your examination by counsel for the opposing party. And your counsel will examine the parties adverse in interest to you. If a party (i) cannot answer a relevant question during discovery or within a reasonable time thereafter or (ii) refuses to answer such a question, the questioning party may be considered by the court which may make an order compelling an answer.</p>	<p>What transpires on discovery can be used at the trial of the action, but cannot be disclosed outside the court process. The discovery process can be very time-consuming and expensive. Litigating the answers to questions on discovery can take up a considerable amount of time. It may result in the answering party being re-examined based on the answers eventually given.</p>
<p>9. Prepare for a formal effort by the court to ensure the case is ready for trial - the <b>Trial Management Conference</b>.</p>	<p>Counsel will prepare a brief for the court to explain your position after the pleading and discovery phases. Counsel must consider and seek instructions regarding calling expert witnesses as well the strategy to be pursued at trial.</p>	<p>This pre-trial stage is sometimes entirely perfunctory but sometimes a professional judge will wade in and the instincts of judges at this stage are often useful.</p>
<p>10. Nothing has worked to get rid of the action and so you must submit to the trial preparation process – being prepared to give testimony at trial.</p>	<p>On the conclusion of the trial a verdict is given by the judge (or jury). The court then deals with the issue as to how much of the winner's legal cost must be paid by the losing party.</p>	<p>Trial preparation is complicated and it takes a lot of time. Trials are open to the public as are the decisions of the courts. If the identity of a journalist's sources is relevant to the proceeding, the court can order the journalist to identify her/his sources at trial.</p>



# reporter's notes

## reporter's notes:

### Notes Made During Newsgathering

There is no legal obligation to keep notes related to a news story unless the newspaper has received notice that the notes might be relevant to a lawsuit or subject to a search warrant, production order, or subpoena.

However, a reporter's notes may prove to be invaluable in defending a case against the newspaper. Sometimes, cases come down to the reporter's word against that of a person who was interviewed for the story. When faced with conflicting evidence, a court may be forced to choose between the two versions of events. When making its decision, the court considers factors such as the credibility of the witnesses and the reliability of the evidence. If the reporter has retained notes that were made at or near the time of the interview and the other party is providing her account of the interview based solely on her memory then the reporter's notes can tip the scales in favour of the reporter's version of events. At trial, a court will frequently find that notes taken at the time of the interview are more reliable than a person's recollection of an interview that occurred some time ago.

While good notes will assist you in defending a claim, bad notes can hurt your defence. It is important to keep in mind that if an article is the subject of a lawsuit then all documents (including drafts of the article, notes, emails, etc.) with any relevance to the article will have to be produced to the other side and may be introduced at trial. A comment in a reporter's notes reflecting a negative impression or other thoughtless comment may be employed as evidence of malice which could jeopardize the newspaper's defence. Reporters should assume all notes taken will be scrutinized by a diligent lawyer in search of ammunition to win a lawsuit against the newspaper. The notes should be accurate and professional with no gratuitous comments.

If the story involves information obtained from a confidential source then it is advisable to omit from the notes the name or any information (such as a telephone number) that would identify the source. Battles can be fought over whether the reporter or newspaper must reveal the identity of a confidential source, but omitting such information when making notes makes it easier to protect the identity of the source. Some reporters use a code name and avoid having identifying information near the substance of an interview.

Most lawsuits against newspapers are defamation claims. Time periods in which to commence a lawsuit for defamation vary by province. In BC and Yukon there is no libel notice required as is required for example, within 6 weeks in Ontario. In BC, a Plaintiff can sue as long as two years after publication and not serve the Notice of Civil Claim for another year. As a result, reporters should keep notes for at least three years and longer if sued on a story. The advent of the responsible journalism defence has changed the practice of many journalists and it is now advisable that reporters keep their notes for at least three years.





# advertising alerts

## advertising alerts

### Copyright in Advertising

**Source:** Copyright Act

<http://laws-lois.justice.gc.ca/eng/acts/C.html>

**Scope:** National

**Last Updated:** March 2015

Please refer to the full Copyright Section in this Media Guide.

Unless stipulated otherwise in your advertising contract with your advertiser, the employer of the creator/author of the ad material owns the copyright.

This is often misunderstood by advertisers who think that if they pay for the ad to appear in the newspaper, they own the copyright over the ad material.

Many newspapers have written agreements with neighbouring papers under which papers pay one another a nominal production fee or exchange artwork at the advertiser's request and licence or assign the right to reproduce.

### Tobacco Advertising

**Source:** Tobacco Act, SC 1997, c.13

<http://laws-lois.justice.gc.ca/eng/acts/T-11.5/page-6.html#docCont>

**Scope:** National

**Last updated:** March 2015

*Tobacco Control Act*, RSBC 1996, c. 451

#### **Tobacco Act**

In 1997, the Tobacco Act was enacted to regulate the manufacturing, sale, labeling and promotion of tobacco products in Canada.

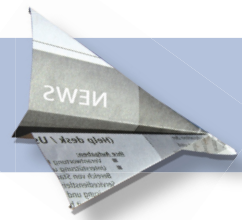
According to section 22 of the Act, tobacco companies may only promote their products:

- in publications delivered directly to an identified adult through the mail; or that have a known adult readership of not less than 85 per cent
- in places where young people aren't permitted by law, such as bars
- by highlighting actual brand characteristics (brand-preference advertising) or by providing factual information about the characteristics, availability or price of the product.

#### **Tobacco companies may not:**

- use 'lifestyle' advertising featuring glamour, recreation, excitement, vitality, risk or daring, or other associations that might appeal to young persons





- depict (in whole or in part) any tobacco product, or its package or brand – or even imagery that might evoke a product or brand
- sponsor youth-oriented activities or events
- include the name of a tobacco product or manufacturer as part of the name of a permanent sports or cultural facility

Although the Act doesn't place restrictions on tobacco advertising and publications, broadcasts or communications from outside Canada, Canadian tobacco manufactures are not permitted to republish foreign ads, campaigns or information to promote their products or brands if they contravene the regulations in Canada's *Tobacco Act*.

### General offence

Every person (Act doesn't specify manufacturer or retailer only) who contravenes section 22(1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding two years, or to both.

### British Columbia

The Tobacco Control Act provides that advertising for tobacco products must not be easily seen or accessed by minors and must not be clearly visible outside a retail establishment.



## Alcohol Advertising

In Advertising & the Law, Alan Shanoff, a well-known Toronto media lawyer, advises his media clients that “you don't really need to know and understand all the different rules. It is a safe assumption that the alcohol and beer companies and their advertising agencies are sophisticated enough to know the rules.”

While you can rely on larger liquor manufacturers and marketers (and their advertising agencies) to know the rules, other would-be advertisers may not be as familiar with the rules.

There are some small retailers who may not be very sophisticated and will not have a good understanding of alcohol advertising rules.

The following points may assist you to deal with

prospective advertisers. Generally, please assume that both CRTC and Provincial regulation apply to Internet advertising.

### British Columbia & Yukon Internet Rules

**Source:** Canadian Radio-television and Telecommunications Commission (CRTC)

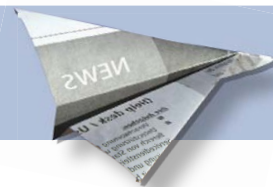
<http://www.crtc.gc.ca/eng/general/codes/alcohol.htm>

**Last updated:** August 1, 1996

All alcohol advertisements that appear on the Internet, radio or television must follow CRTC's Code For Broadcast Advertising Of Alcoholic Beverages:

Commercial messages for alcoholic beverages shall not:

- a) attempt to influence non-drinkers of any age to drink or to purchase alcoholic beverages;
- b) be directed at persons under the legal drinking age, associate any such product with youth or youth symbols, or



portray persons under the legal drinking age or persons who could reasonably be mistaken for such persons in a context where any such product is being shown or promoted;

- c) portray the product in the context of, or in relation to, an activity attractive primarily to people under the legal drinking age;
- d) contain an endorsement of the product, personally or by implication, either directly or indirectly, by any person, character or group who is or is likely to be a role model for minors because of a past or present position of public trust, special achievement in any field of endeavour, association with charities and/or advocacy activities benefiting children, reputation or exposure in the mass media;
- e) attempt to establish the product as a status symbol, a necessity for the enjoyment of life or an escape from life's problems, or attempt to establish that consumption of the product should take precedence over other activities;
- f) imply directly or indirectly that social acceptance, social status, personal success, or business or athletic achievement may be acquired, enhanced or reinforced through consumption of the product;
- g) imply directly or indirectly that the presence or consumption of alcohol is, in any way, essential to the enjoyment of an activity or an event;
- h) portray any such product, or its consumption, in an immoderate way;
- i) exaggerate the importance or effect of any aspect of the product or its packaging;
- j) show or use language that suggests, in any way, product misuse or product dependency, compulsive behaviour, urgency of need or urgency of use;
- k) use imperative language to urge people to purchase or consume the product;
- l) introduce the product in such a way or at such a time that it may be associated with the operation of any vehicle or conveyance requiring skill;
- m) introduce the product in such a way or at such a time as may associate the product with any activity requiring a significant degree of skill, care or mental alertness or involving an obvious element of danger;
- n) contain inducements to prefer an alcoholic beverage because of its higher alcohol content;
- o) refer to the feeling and effect caused by alcohol consumption or show or convey the impression, by behaviour or comportment, that the people depicted in the message are under the influence of alcohol;
- p) portray persons with any such product in situations in which the consumption of alcohol is prohibited; or
- q) contain scenes in which any such product is consumed, or that give the impression, visually or in sound, that it is being or has been consumed.

### **British Columbia**

**Source:** *Liquor Control And Licensing Act*, RSBC 1996, c.267

[http://www.bclaws.ca/Recon/document/ID/freeside/00\\_96267\\_01](http://www.bclaws.ca/Recon/document/ID/freeside/00_96267_01)

*Liquor Control And Licensing Regulation*, B.C. Reg. 244/2002, s. 56-57

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/244\\_2002](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/244_2002)

**Last updated:** November 24, 2014

Guidelines for alcohol advertising differ slightly depending on whether the advertisement is broadcasted on TV or radio, on the one hand or published in print, on the other hand.

The Liquor Control and Licensing Branch (LCLB) of the Ministry of Justice administers the *Liquor Control and Licensing Act* and Regulations.

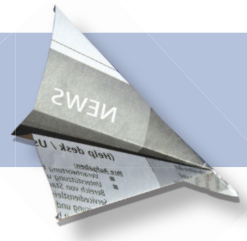
- News and updates on Liquor Policy Review Implementation are available on the LCLB website <http://www.pssg.gov.bc.ca/lclb/policy/index.htm>

As of Spring 2015 (March 10, 2015), the Attorney General for British Columbia, Suzanne Anton, announced changes to Liquor legislation and Regulation, some of which are not yet in force. It is said that, as of April 1, 2015 under Policy Directive No.15-01, select grocery stores will be permitted to sell liquor either in a store-within-a-store or by means of 100% BC wine on the shelf. Please see the LCLB website for the latest Policy Directives and updates.

According to the LCLB website, the following advertising guidelines apply:

### **Liquor Advertizing (includes Internet Promotions)**

All liquor licensees in British Columbia – this includes bars, pubs, restaurants, licensee retail stores, wineries, breweries and distilleries – are allowed to advertise their products, but they must comply with Liquor Control and Licensing regulations.



For example, licensees may put up signs to advertise their establishments or products, place advertisements in newspapers, magazines and periodicals, or on television, radio or the Internet, and publish pamphlets and brochures. These signs and advertisements may include liquor prices (including specials), hours of sale and the names of liquor manufacturers or brands.

**They may not:**

- encourage people to drink liquor or to drink irresponsibly (ads that mention price must take this into account; if a licensee's price advertising encourages or results in patrons drinking to excess, the Liquor Control and Licensing Branch can prevent the licensee from including liquor prices in future advertising)
- show people drinking liquor, or anyone who is either intoxicated or behaving irresponsibly or illegally
- associate liquor with driving
- be directed at minors or placed in locations used or visited mostly by minors, such as video arcades and playgrounds
- depict liquor as one of life's necessities, key to social acceptance or personal success, central to the enjoyment of an activity, or a status symbol.

**In addition:**

- ads for bars and winery lounges may not use pictures of minors (in BC, that's anyone under the age of 19), or of personalities, images or activities that may appeal to minors
- ads for bars, winery lounges and restaurants may not show people with liquor, unless the people have food in front of them
- ads for restaurants must make clear that serving food is the restaurant's primary purpose
- ads for companies that make beer, wine or spirits may name a liquor store, bar or restaurant where the product is sold, and
- ads for companies that make beer, wine or spirits may not be shown on a theatre screen before a movie, if the movie being presented is primarily for a young audience.

**Internet Promotions**

Licensed establishments may use the internet as part of their advertising and sales strategy. **However, unlicensed internet based retail liquor sales – what are commonly referred to as “virtual liquor stores” – are not permitted.**

To be eligible for a liquor licence a person must have a store front operation with a legal interest in the proposed physical site of the business. When there is no physical establishment from which the business would operate (where it is a “virtual” business), the business cannot be issued a liquor licence, and therefore, it cannot advertise the beverages it cannot sell.

**Special Occasion Licenses (SOLs)**

- Special Occasion Licenses are required to sell/service alcohol in a public space that is not a licensed premise.
- As of Spring 2015, special event liquor licenses can be applied for online.

**According to the *Special Occasion License Policy Manual*:**

No advertising for a private or public special occasion is allowed that indicates that liquor will be sold or served at the special occasion. Text or graphics that either depict or imply the availability of liquor are also not permitted. For example, advertisements may not show wine glasses or beer steins or mention that there will be a “wine tent” or “beverage garden” as part of the special event.

The licensee may promote the special occasion by advertising the name of the event, its location, a description of any entertainment provided, and the hours in which food or refreshments will be available.

The only exception to the prohibition on advertising the availability of liquor is in the case of a public special occasion for wine, beer or other liquor festivals where more than one manufacturer is conducting a tasting at one location. In that situation, the host organization may advertise the name of the event – “The B.C. Wine Festival,” for example – followed by the names of the participating wineries

Source: <http://www.pssg.gov.bc.ca/lclb/docs-forms/lclb208-policy-specialoccasion.pdf>

- If you find the foregoing rule and exception confusing, you are not alone.



According to the *Liquor Control and Licensing Act*, the following penalties apply:

### Offences and penalties

- 48** (1) A person who contravenes this Act or the regulations commits an offence.
- (2) Subject to subsection (3), if the person convicted of an offence is an individual, the individual is liable,
- (a) if convicted of an offence under this section in respect of a contravention of section 38 (1), to a fine of not more than \$50,000 or to imprisonment for not more than 12 months, or to both, or
  - (b) if convicted of any other offence, to a fine of not more than \$10,000 or to imprisonment for not more than 6 months, or to both.
- (3) If the person convicted of an offence is a corporation or a licensee that is not a corporation, the person is liable,
- (a) if convicted of an offence under this section in respect of a contravention of section 38 (1), to a fine of not more than \$100,000, or
  - (b) if convicted of any other offence, to a fine of not more than \$50,000.
- (4) Subject to the maximum fine referred to in subsection (2) (a), section 4 of the Offence Act continues to apply to a person convicted of an offence under this section in respect of a contravention of section 38 (1) of this Act.

### Yukon

**Source:** *Liquor Act*, RSY 2002, c.140  
*Liquor Regulation*, O.I.C. 2009/36  
<http://www.ylc.yk.ca/legislation.html>  
**Last updated:** May 2012

The Liquor Act and Regulations are governed by the Yukon Liquor Corporation of the Yukon Government.

Unlike British Columbia, advertising guidelines are not available on the Yukon Liquor Corporation website. However, under Resources and Information for Licensees and Permittees, the website directs readers to CRTC's Code For Broadcast Advertising Of Alcoholic Beverages (see above).

In the *Regulation*, the following is the only legal guideline regarding alcohol advertising:

### Advertising

- 40** (1) All advertisements pertaining to any liquor, licensed premises, special occasions or receptions shall be submitted by the licensee or by the liquor manufacturer or agent thereof to the president for approval prior to publication or broadcasting.

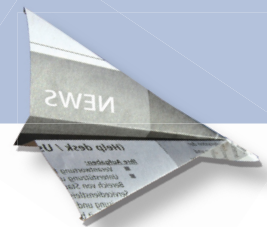
The president referred to in this section of the Regulation refers to the president of the Yukon Liquor Corporation.

If anyone contravenes the Act, the following penalty applies:

### General penalty

- 96** (1) If a person commits an offence under this Act or the regulations for which no special penalty has been provided, they are liable on summary conviction
- (a) for a first offence to a fine of not more than \$2,000 or imprisonment for not more than six months, or to both fine and imprisonment; and
  - (b) for each subsequent offence to a fine of not more than \$3,000 or imprisonment for not more than 12 months, or to both fine and imprisonment.
- (2) If the person convicted of an offence referred to in subsection (1) is a corporation, it is liable
- (a) for a first offence to a fine of not more than \$5,000; and
  - (b) for each subsequent offence to a fine of not more than \$10,000.

There has been no *Charter* challenge to section 40, quoted above. However, the regulation would appear to be vulnerable.



## Marijuana Advertising

At the time of writing (Spring of 2015) Canadian law and Canadian law enforcement respecting marijuana is in flux or transition. This includes issues affecting advertising.

The federal government says that all commercial operations, except federally licenced medical growers and federally licenced dealers are “illegal” operations. A Charter case that allows home growing for self-medication is making its way up the Court system but, presumably, home growing operations for self-medication won’t be advertising.

As a result, strict compliance with federal law might lead a newspaper to decline all advertising by anyone who isn’t licenced as a grower under section 12 of the [Marihuana for Medical Purposes Regulation](#) and further detailed in this [Health Canada advertising bulletin](#) or licenced as a dealer under [section 8 of the Narcotics Control Regulation](#).

Even then, strict compliance might lead a newspaper to decline any advertising containing anything but the most basic information. In an information update, issued November 25, 2014, Health Canada reports that on that day it sent warning letters to 20 licenced producers (growers) regarding their advertising practices. The “update” attempts to summarize prohibitions against advertising in the Marihuana for Medical Purposes Regulation, the Food and Drug Act and the Narcotic Control Regulations.

In the summary, Health Canada states that advertising by licenced producers should be “limited to basic information for prospective clients such as the brand name, proper or common name of the strain, the price per gram, the cannabinoid content and the company’s contact information.” The update gives licenced producers until January 12, 2015 to comply or risk facing consequences.

The update can be found here: <http://www.healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2014/42677a-eng.php>

It is likely that “basic information” is not a criteria, which will survive Charter scrutiny as sufficiently clear to be a “limit prescribed by law” under section 1 of the Charter. Consequently, it is likely that the legislation will be invalid or “read-down”, perhaps to prohibit no more than claims in advertising of medicinal benefits or advertising aimed at minors.

In this legal context, police chiefs have recommended decriminalization, and numerous storefront dispensaries, comfort clubs, and other public retailers and facilities continue to proliferate and have not been subjected to any enforcement proceedings.

There is no indication of any enforcement process having been initiated against advertisers nor against their media hosts. That said, at the time of writing (Spring of 2015), most community newspapers in British Columbia have not carried advertising for marijuana. Some have declined, perhaps out of concern as to legality, but more likely out of a concern respecting community values and the role of a community newspaper in a community.

Given a total lack of enforcement and the proliferation of dispensaries, the City of Vancouver has recently approved bylaws to licence and regulate dispensaries. Other communities are rumoured to follow Vancouver’s lead. This decision by the City of Vancouver has been denounced by the federal Minister of Health as being tacit permission for illegal enterprise. Given the move by the City to charge a \$30,000 licence fee to dispensaries, legal challenges can be expected.

Publishers in their communities are in the best position to decide whether to accept or decline marijuana advertising. While risk of enforcement proceedings respecting alleged illegality would appear slight, legality is, nonetheless, one of the issues and will remain an issue at least until federal law is amended. While the legality of an advertisement is mainly an issue for the advertiser, newspapers frequently recommend against and even decline content, which is clearly illegal. Publishers are entitled to decline advertising for any reason or even for no reason at all, in most circumstances.

Most publishers, to date, are basing their decisions on their perception of community values. Such values can change. It is not clear if (or when) publishers’ natural desire for advertising revenue and their natural attention to competitive forces will





overcome their reluctance to accept such ads. In the present period of uncertainty, it is doubtful that the advent of marijuana advertising will be determined by incremental changes in the law, whether federal legislation or municipal regulation.

The secondary issue of what content is, or ought to be, permitted in marijuana advertising is a subject with which the federal government has only begun to grapple. It is clear that medicinal claims, as with prescription drugs, and advertising aimed at minors will not be permitted. It is equally clear that the federal “update” purporting to limit content to “basic” information is unlikely to be the last word or to sustain any concerted Charter challenge.

The only thing that is certain is that this situation will change.

## Elections

**Source:** *Canada Elections Act*, SC 2000, c. 9

<http://laws-lois.justice.gc.ca/eng/acts/e-2.01/>

*Election Act*, RSBC 1996, c. 106

[http://www.bclaws.ca/Recon/document/ID/freeside/96106\\_00](http://www.bclaws.ca/Recon/document/ID/freeside/96106_00)

*Local Elections Campaign Financing Act*, SBC 2014, c. 18

<http://www.bclaws.ca/civix/document/id/complete/statreg/14018>

### **Canadian Federal Elections**

[www.electionscanada.ca](http://www.electionscanada.ca)

Governed by Elections Canada

**Last updated:** October 1, 2014

### **BC Provincial/Local Elections**

<http://www.elections.bc.ca/index.php/can/adspensors/what-is-election-advertising/>

Media Obligations Under the Election Act Guide

<http://www.elections.bc.ca/docs/guidebooks/862.pdf>

Governed by Elections BC

### **Election Advertising**

With the addition of local government, as of the spring of 2014, election advertising at all three levels is regulated much the same way, as described generally below.

As of the spring of 2014, provincial legislation regulates advertising affecting all local government elections including elections for mayor, council members, directors of regional districts, island trust council members, school trustees, and parks board members.

Regulation of local municipal advertising affecting elections arises under the *Local Elections Campaign Financing Act*, SBC 2014, c. 18, which can be found at the following URL <http://www.bclaws.ca/civix/document/id/complete/statreg/14018> (please note that it covers not only general elections but also by-elections and elections that are referred to “assent votes” [under Part 4 of the *Local Government Act*]).





The *Local Elections Campaign Financing Act* has more than 100 sections and it is complex legislation, similar and parallel to the provincial election advertising regime under the provincial *Election Act*, RSBC 1996, c. 106 [http://www.bclaws.ca/Recon/document/ID/freeside/96106\\_00](http://www.bclaws.ca/Recon/document/ID/freeside/96106_00).

Not only does the provincial legislation apply to general elections for the Legislative Assembly of the province, but it also applies to by-elections, any referendum or plebiscite such as the plebiscite which took place in the spring of 2015 respecting Vancouver area transit. Also similar and parallel to the municipal and provincial legislation, the Federal election advertising regime is detailed at *Canada Elections Act*, S.C. 2000, c. 9, s. 319 <http://laws-lois.justice.gc.ca/eng/acts/e-2.01/>. The regulation of advertising applies not only to general elections but also by-elections and any referendum.

All of these regimes place responsibility for compliance on the advertiser, not on the host newspaper, website, or other media outlet. Nonetheless, newspapers and other hosts of advertising will want to be generally aware of the rules in order to assist would-be advertisers.

Not only are the candidates and political parties regulated by election advertising legislation at all three levels, but also all persons and organizations that want to advertise during election campaigns with content that tends to favour one candidate or party over another or tends to disparage one candidate or party. Election advertising is advertising during an election campaign either by candidates or their parties, on the one hand, or by any individual or organization, on the other hand where the advertising promotes or opposes directly or indirectly the outcome of the election be it election of a candidate or the outcome of an assent vote, a referendum or a plebiscite.

Generally speaking, the legislation regulates election advertising during the period immediately preceding the vote. For example, pursuant to section 10(2) of the *Local Elections Campaign Financing Act*, the “elections proceedings” is defined as the 46 days before the municipal voting day for the election of a candidate or 30 days before the voting day of an assent vote.

Generally speaking, sponsors of election advertising, be they candidates, parties or independent advocates, are obliged by the legislation to identify themselves and to provide contact information. These identification requirements apply to all three levels of government. The sponsor of election advertising during relevant periods must be registered and there are various accounting and reporting obligations, enforced by consequences.

Generally speaking, there is no advertising permitted on election day. However, pre-existing advertising on the Internet from before the voting day and not changed any time up to the end of the voting day is permitted during elections at all three levels of Government.

Not only must the sponsor (be it candidate, party or third party) register, and file accounting records in respect of all election advertising, but there are Federal and Provincial limits on the amount of that advertising that third party sponsors can place. These are dollar limits on the amount of advertising that individual persons, non-governmental organizations, charities or corporation can expend on election advertising during the relevant period leading up to the vote.

In addition, Provincial and Federal legislation mandates that the dollar charges for display advertising or the “rate card” of the newspaper cannot be altered to take into account the greater demand during election. Election advertising must be priced at the same amount as other display advertising.

Newspapers may want to bring the following issues to the attention of the would-be election advertiser:

- Sponsor of election advertising must be identified and contact information is required.
- Sponsor must be registered with the election advertising authority.
- Sponsor must account to the election advertising authority for the expenditures on election advertising in a specified format.
- There is no advertising permitted on election day except advertising posted on the Internet before the voting day that does not change during the voting day.
- There are dollar limits to third-party advertising. So for example, advertising by any third party entity in a Federal election is limited to a \$150,000 per election period and limited to \$3,000 in favour or opposing any given federal candidate (s. 235.1 of the *Elections Act*).



- Newspaper charges for advertising or their “Rate Card” cannot be altered upward to take account of greater demand during elections and election advertising must be sold at the same price as other display advertising.

The legislation in government websites continue to state that advertising limits not only apply to the campaign period, 28 days for provincial or 36(+) days for federal, but also apply to provincial campaigns for “the period beginning 60-days before the campaign...”. Restrictions on advertising prior to the campaign period were struck by the BC Supreme Court in 2009 in a case concerning third party advertising. As the judge noted, Charter principles, apply equally to an application to strike pre-campaign limits applicable to candidates and political parties, as well as their parties. Only third parties were affected for technical reasons.

The 2009 decision was upheld in the British Columbia Court of Appeal and, subsequent to that, entirely new pre-campaign election advertising regulations were again attempted by the provincial Attorney General and again struck by the BC Court of Appeal in a subsequent reference seeking the Court’s blessing of a shorter campaign period (not 60 but between 40 and zero days). That reference was decided on October 4, 2012 - see <http://canlii.ca/t/ft1n3>

As a result, it can now be stated that election advertising restriction provincially and federally apply to the campaign period only. By analogy, the same applies to municipal elections.

There was no success, however, on a similar attempt to strike the requirement that the first dollar of third party advertising carries a Registration obligation. Any advertisers spending any sum during the campaign must register. This was the result of a challenge by the BC Freedom of Information and Protection of Privacy Association, 2014 BCSC 660, decided by Mr. Justice Bruce Cohen.

## Yukon

**Source:** *Elections Act*, RSY 2002, c.63

Yukon Territorial Elections

<http://www.electionsyukon.gov.yk.ca/index.html>

Governed by Elections Yukon

Like the BC *Election Act*, Yukon’s *Elections Act* provides:

### NOTICES AND ADVERTISING

#### Name and address of sponsor

- 326** (1) During an election period, every notice or advertisement that refers to an election, whether printed, broadcast or published electronically, shall include the name and address of its sponsor.
- (2) Subsection (1) does not apply to any printed notice or advertisement bearing only one or more of the following
- a) the colours or logo of a registered political party;
  - b) the name of a registered political party;
  - c) the name of a candidate. S.Y. 2002, c.63, s.326

#### Posted material for a candidate or political party

- 327** Every person who erects, posts or affixes any notice or advertisement that refers to an election shall
- a) comply with all safety rules imposed by the owner of the property or by municipal or other regulatory authority;
- and
- b) remove it or cause it to be removed within 30 days after polling day. S.Y. 2002, c.63, s.327

#### Offence to fail to comply

- 328** Any person who fails to comply with section 327 is guilty of an offence. S.Y. 2002, c.63, s.328



## Municipal Government Advertising

### British Columbia

**Source:** *Local Government Act*, RSBC 1996, c. 323

[http://www.bclaws.ca/Recon/document/ID/freeside/96323\\_00](http://www.bclaws.ca/Recon/document/ID/freeside/96323_00)

*Community Charter*, SBC 2003, c. 26

[http://www.bclaws.ca/civix/document/id/complete/statreg/03026\\_00](http://www.bclaws.ca/civix/document/id/complete/statreg/03026_00)

**Last updated:** February 25, 2015

In the *Local Government Act*, it states that “unless a term is otherwise defined in this Act or a contrary intention appears in this Act, the definitions in the *Community Charter* apply to this Act”. Section 6.4 of the *Local Government Act*, provides that when municipal notice is required to be given in a newspaper, it must be done according to section 94 of the *Community Charter*, which reads as follows:

#### Requirements for public notice

- 94** (1) If this section applies, the applicable notice must be
- a) posted in the public notice posting places, and
  - b) published in accordance with this section.
- (2) Subject to subsection (4), publication under subsection (1) (b)
- a) must be in a newspaper that is distributed at least weekly
    - i. in the area affected by the subject matter of the notice, and
    - ii. if the area affected is not in the municipality, also in the municipality, and
  - b) unless otherwise provided, must be once each week for 2 consecutive weeks.
- (3) The obligation under subsection (2) may be met by publication of the notice in more than one newspaper, if this is in accordance with that subsection when the publications are considered together.
- (4) If publication under subsection (2) is not practicable, the notice may be given in the areas by alternative means as long as the notice
- a) is given within the same time period as required for publication,
  - b) is given with the same frequency as required for publication, and
  - c) provides notice that the council considers is reasonably equivalent to that which would be provided by newspaper publication if it were practicable.
- (5) As an exception, subsection (4) (b) does not apply in relation to an area if the alternative means is by individual distribution to the persons resident in the area.
- (6) If the same matter is subject to 2 or more requirements for publication in accordance with this section, the notices may be combined so long as the requirements of all applicable provisions are met.
- (7) A council may provide any additional notice respecting a matter that it considers appropriate, including by the Internet or other electronic means.

### Yukon

**Source:** *Municipal Act*, RSY 2002, c.154

[http://www.gov.yk.ca/legislation/legislation/page\\_m.html](http://www.gov.yk.ca/legislation/legislation/page_m.html)

Respecting provisions in section 18, 19, 30, and 31, other than the formation of municipalities and rural government structures, there is not requirements respecting public notice to be made by the Yukon Government/First Nations.





## Major Sporting Franchises

**Source:** National Football League

<http://nflcommunications.com/>

Broadcast Law Blog

<http://www.broadcastlawblog.com/2015/01/articles/beware-of-the-trademark-and-copyright-issues-in-ads-and-promotions-involving-the-super-bowl/>

**Scope:** National

**Last updated:** January 2015

Many advertisers, especially bars and restaurants, will want to advertise 'Super Bowl' related promotions in the days leading up to the Super Bowl. Even though the advertising blitz may be heavy, it's important to remember the law regarding the use of NFL trademarks.

The NFL controls all marketing and proprietary rights with respect to the Super Bowl. The NFL uses its trademarks in order to generate revenue and reserves the use of trademarked material to official sponsors and licensees who have invested large amounts of money to acquire the specific rights to use these marks.

According to federal law, the NFL retains the exclusive right to control marketing of the Super Bowl and all of its associated trademarks. These trademarks include the phrases 'Super Bowl', 'Super Sunday', 'National Football League', 'NFL' and the NFL shield and all Super Bowl logos. Additionally, the NFL and the individual teams also own registered trademarks for the team names (e.g., 'Jaguars' or 'Buccaneers'), nicknames (e.g., 'Jags' or 'Bucs') and uniform and helmet designs. The NFL also owns the trademarks for 'National Football Conference' and 'NFC', as well as 'American Football Conference' and 'AFC'. Without the express permission of the NFL marketers, advertisers may not use these terms in their promotions.

### Summary of Trademarks:

#### **You CAN'T print:**

'Super Bowl'  
'Super Sunday'  
'NFL, NFC, or AFC'  
Any specific team name or nickname  
Any NFL logo or uniform

#### **You CAN print:**

'The Big Game in Miami'  
'The Football Championship Game'  
The date of the game  
The names of the teams' home cities  
A generic football picture or graphic

Remember, major investments have been made by official sponsors and licensees to obtain the rights to use NFL trademarks. Accordingly, the NFL vigorously protects and enforces its rights regarding Super Bowl marks. The bottom line is that running promotions or advertisements designed to create the appearance of a relationship between the newspapers and/or its advertisers and the NFL or Super Bowl is risky and possibly illegal.

**Source:** Canadian Football League

<http://www.cfl.ca/>

**Scope:** National

**Last updated:** March 2015

Like the NFL information above, the CFL has registered trademarks on CFL, Grey Cup, its team names and mascots. All comments respecting the NFL above apply equally to CFL marks.



**Source:** National Hockey League  
<http://www.nhl.com/ice/page.htm?id=26389>  
**Scope:** National  
**Last updated:** March 2015

NHL, the NHL Shield, the words, “Stanley Cup” and its image, and NHL Conference logos are all registered trademarks of the National Hockey League. All NHL logos and marks and NHL member club logos and marks as well as all other proprietary materials depicted on the websites are the property of the NHL or the respective NHL member clubs or are licensed to the NHL. These marks may not be reproduced without the prior written consent of the NHL or its member franchises.

Content contained in sponsor advertisements is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws.

For all leagues, use of all registered trademarks are closely monitored and unauthorized use is acted upon.

**Source:** NHL Players’ Association  
<http://www.nhlpa.com>  
**Scope:** National

### NHL Hockey Pools

The NHL Players’ Association (NHLPA) owns the rights to the players’ names, whereas the NHL owns the rights to the team names. Any hockey pool has to be licenced through the NHLPA which involves providing information to them about the process and prizes as well as signing a licencing agreement with them. <http://www.nhlpa.com/inside-nhlpa/contact-us>

**Source:** Canadian Olympic Committee  
<http://olympic.ca/brand-use>  
**Scope:** National

### Olympic and Paralympic Marks Act Public & Business Community Brand Use Guidelines

Government of Canada has enacted legislation – the *Olympic and Paralympic Marks Act* (‘Act’) – to specifically protect the Olympic Brand in Canada. This legislation is closely monitored and tightly enforced.

The ‘Olympic Brand’ is comprised of the names, phrases, marks, logos and designs relating to the Olympic Movement. This includes, but is not limited to, those relating to specific Olympic Games, the Canadian Olympic Team, Olympic moments and the accomplishments of Olympians.

Only official sponsors, licensees and partners of the COC are permitted to suggest an affiliation or connection with the Olympic Movement in Canada. When companies create false or misleading commercial associations with the Olympic Brand without making the financial investment required to secure official marketing rights, they are threatening the COC’s sponsorship and licensing programs and impairing the COC’s ability to attract future sponsors and licensees.

The *Act* prevents a person or company from promoting or otherwise directing public attention to their business, wares or services in a manner that misleads or is likely to mislead the public into believing that the business, wares or services in question are approved, authorized or endorsed by the COC, or that a business association exists between the business in question and the Olympic Brand.

Section 3(5) of the *Act* specifically allows for use of the Olympic trademarks in news reports and ‘for purposes of criticism’.

In addition, the *Act* allows current and former Olympic and Paralympic athletes to use or to permit the use of certain prohibited marks (such as OLYMPIC and OLYMPIAN) in reference to their own participation in Olympic Games.



## Reproducing Money

**Source:** Bank of Canada

[http://www.bankofcanada.ca/wp-content/uploads/2011/05/Policy\\_Reproduction\\_Bank\\_Note\\_Images.pdf](http://www.bankofcanada.ca/wp-content/uploads/2011/05/Policy_Reproduction_Bank_Note_Images.pdf)

**Scope:** National

**Last updated:** March 2015

### Bank of Canada Policy on the Reproduction of Bank Note Images

Section 449 of the Criminal Code provides that anyone who makes or begins to make counterfeit money is guilty of an indictable offence and is liable to imprisonment for a term not exceeding 14 years.

Section 462 (1) of the Criminal Code states that anything used or intended to be used to make counterfeit money belongs to Her Majesty. A peace officer may seize any machine, tool, instrument, or item that was used, intended to be used, or adapted, to make counterfeit money and forward it to the Minister of Finance for disposal.

The Bank of Canada is the registered copyright owner of all design elements of Canadian bank notes, including the portraits, vignettes and numerals. Canadian criminal and other statutory legislation governs the reproduction of bank note images.

To avoid the risk of contravening the law, anyone wishing to reproduce a bank note image should contact the Bank for permission. The Bank's written permission for the reproduction of bank note images must be obtained before the image is reproduced. The Bank will give permission only in writing.

Requests to produce bank note images must be submitted in writing to the Bank and must include:

- a description of the proposed reproduction and its purpose
- a description of the proposed placement and/or distribution of the material featuring the bank note image
- the date by which the Bank's approval is requested
- a PDF of the proposed reproduction

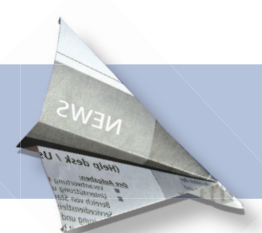
It is not necessary to request the Bank's permission to use bank note images for film or video purposes, provided that the images are intended to show a general indication of currency, and that there is no danger that the images could be misused.

The Bank will not approve requests where the originator wishes to produce a promotional coupon or voucher that bears any likeness to a Canadian bank note. The Bank is concerned that these reproductions could be mistaken for genuine notes, and also believes that these coupons or vouchers diminish the importance of bank notes to Canadians (whatever that means).

There is a list of conditions that the Bank may impose before it will permit the reproduction of bank note images. Examples of possible conditions that the Bank may impose on use of a reproduced image:

- smaller or larger than the length or width of a bank note;
- in black and white or only one-sided;
- marked with a visible reminder that the image is a copy that is reproduced with the permission of the Bank;
- shown on a slant and not flat to the camera or naked eye;
- overprinted with the word SPECIMEN in lettering that is not less than one-third the size of the reproduction and which runs diagonally from the bottom left corner to the top right corner of the image if the image is shown flat to the camera;
- coloured in a manner that is distinctly different from the main colours used on any current bank note;
- in the case of the reproduction of part of a bank note, no more than 50 per cent of the total bank note image may be shown.

According to Section 42(1) of the *Copyright Act*, it is an offence to knowingly make for sale, sell, import for sale, or, by way



of trade, expose for sale, or exhibit a copy of a work that infringes copyright. However, Section 3(1) of the *Copyright Act* provides that a copy of a bank note image will not infringe the copyright if the Bank, the copyright owner, authorized its reproduction.

Penalty would depend on whether contravention is considered a Criminal Offence or Copyright Infringement. There is a risk that the newspaper, website or the host of advertisement material including the image of currency will be subject to penalties. The jeopardy resides with the host as well as the advertiser.



## Mortgages, Loans and Financial Services

### Mortgage Brokers

**Source:** *Mortgage Brokers Act*, RSBC 1996, c. 313  
Financial Institutions Commission of British Columbia  
[http://www.fic.gov.bc.ca/index.aspx?p=mortgage\\_brokers/index](http://www.fic.gov.bc.ca/index.aspx?p=mortgage_brokers/index)

The Financial Institutions Commission of British Columbia (FICOM) is a regulatory agency within the Ministry of Finance that regulates mortgage brokers. The FICOM Registrar is responsible for registering entities and individuals as mortgage brokers and submortgage brokers under the *Mortgage Brokers Act*. It is the responsibility of the would-be advertiser to ensure appropriate registration. However, when accepting ads from this group, newspapers may wish to verify that the advertisers are registered mortgage brokers on the FICOM website ([http://www.fic.gov.bc.ca/web\\_listings/MBSBListing.aspx](http://www.fic.gov.bc.ca/web_listings/MBSBListing.aspx)).

All persons who engage in mortgage brokering, mortgage lending, mortgage trading or mortgage administration in British Columbia, must be registered unless they are exempt.

A mortgage broker is defined by the *Mortgage Brokers Act* as a person who does any of the following:

- a) carries on a business of lending money secured in whole or in part by mortgages, whether the money is the mortgage broker's own or that of another person;
- b) holds himself or herself out as, or by an advertisement, notice or sign that indicates that he or she is, a mortgage broker;
- c) carries on a business of buying and selling mortgages or agreements for sale;
- d) in any one year, receives an amount of \$1,000 or more in fees or other consideration, excluding legal fees for arranging mortgages for other persons;
- e) during any one year, lends money on the security of 10 or more mortgages;
- f) carries on a business of collecting money secured by mortgages.

When advertising, a mortgage broker or submortgage broker

- must not make any false, misleading or deceptive statement in any advertisement, circular, pamphlet or other similar material, and
- must publish the name under which he or she is registered in every advertisement, circular, pamphlet or other similar material used in connection with his or her business



If the Registrar feels that the mortgage broker or submortgage broker has not complied with either of the above, the Registrar may order the person to stop using the advertisement, circular, pamphlet or other similar material.

If any of the following offences are committed, the person may be fined or prosecuted for the violation:

### Offences

**21** (1) Unless exempted under section 11, a person must not do any of the following:

- a) carry on business as a mortgage broker or submortgage broker unless the person is registered under this Act;
- b) carry on business as a mortgage broker otherwise than in the person's registered name or elsewhere than at or from the person's registered address;
- c) advertise or in any other way indicate that the person is a mortgage broker or submortgage broker other than under the registered name of the mortgage broker;
- d) employ as a submortgage broker any person not registered under this Act.

(2) A mortgage broker must not make or cause to be made any representation in writing that the mortgage broker is registered under this Act.

### Yukon

The Yukon does not have a *Mortgage Brokers Act* or applicable regulation.



## Payday Loan Brokers

**Source:** *Business Practices And Consumer Protection Act*, SBC 2004, c. 2

[http://www.bclaws.ca/Recon/document/ID/freeside/04002\\_00](http://www.bclaws.ca/Recon/document/ID/freeside/04002_00)

*Payday Loans Regulation*, B.C. Reg. 57/2009

[http://www.bclaws.ca/civix/document/id/complete/statreg/57\\_2009](http://www.bclaws.ca/civix/document/id/complete/statreg/57_2009)

This Act applies to advertisers who promote loans to your readers. Consumer Protection BC issues payday lender licenses based on the requirements of the *Business Practices and Consumer Protection Act* and the *Payday Loans Regulation*. When accepting ads from these companies, ask for their license number and search it on the Consumer Protection BC website:

<http://www.consumerprotectionbc.ca/businesses-payday-lenders-home/licencesearch>

- A payday lender must include the licence number on all visual advertisements including on the Internet.
- If the payday lender does business by means of the Internet, the payday lender must display the licence number and other identification, in a form approved by the director, prominently at, or near, the top of the introductory page of the website for British Columbia borrowers.
- A payday lender must not carry on business in a name other than the name on the licence.
- The *Payday Loans Regulation* took effect on November 1, 2009 and stipulates that all payday lenders doing business with BC consumers must be licensed with Consumer Protection BC – that includes lenders doing business over the Internet and by telephone.

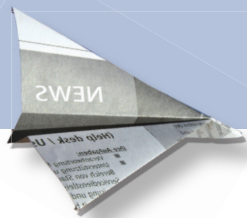
If a newspaper publishes a deceptive or misleading advertisement, the newspaper is not liable if the newspaper proves that it did not know and had no reason to suspect that the publication was misleading or deceptive. The burden of proof is on the supplier of the ad to show they did not commit or engage in a deceptive act. The advertising newspaper must maintain a record of the name and address of the supplier of the advertisement.

### Penalty

- 190** (1) An individual who commits an offence under this Act is liable to a fine of not more than \$10,000 or to imprisonment for not more than 12 months or to both.
- (2) A corporation who commits an offence under this Act is liable to a fine of not more than \$100,000.
- (3) Despite subsections (1) and (2), the court may increase a fine imposed under this section by an amount of up to three times the court's estimation of the amount of monetary benefit acquired or accrued as a result of the commission of the offence.

### Yukon

The Yukon does not have a *Payday Loans Act* or applicable regulation.



## Loans and Trusts

**Source:** Financial Institutions Act, RSBC 1996, c. 141

[http://www.bclaws.ca/Recon/document/ID/freeside/96141\\_00](http://www.bclaws.ca/Recon/document/ID/freeside/96141_00)

Financial Institutions Commission of British Columbia

<http://www.fic.gov.bc.ca/index.aspx?p=fid/bulletins#TR>

The Financial Institutions Commission of British Columbia regulates the registration of organizations that conduct business as trust companies. The listing of BC authorized trust companies can be found at [http://www.fic.gov.bc.ca/web\\_listings/TrustCompanies.aspx](http://www.fic.gov.bc.ca/web_listings/TrustCompanies.aspx)

The listing is for information purposes only. Further verification can be obtained by calling 604-660-3555 or 866-206-3030 toll free.

If the trust company is a federally regulated trust company, you can contact the Ombudsman for Banking Services and Investments who may be able to assist you. The Ombudsman for Banking Services and Investments has a web site at [www.obsi.ca](http://www.obsi.ca). Further, the Office of the Superintendent of Financial Institutions (Canada) is responsible for regulating federal trust companies. The Office of the Superintendent of Financial Institutions (Canada) has a web site located at [www.osfi-bsif.gc.ca](http://www.osfi-bsif.gc.ca).

The requirements of the Financial Institutions Act must be met in order to form a corporation for the purpose of carrying trust business in BC. Once incorporated, a trust company is not permitted to carry on trust business in BC unless it has received a Business Authorization from the Commission. The trust company must apply for this authorization within one year of the date of its incorporation.

### Yukon

**Source:** *Trust and Loan Companies Act*, SC 1991, c. 45

The Yukon relies on the *Federal Trust and Loan Companies Act*, and states the following in relation to advertising:

**428** No person shall authorize the publication, issue or appearance of any advertisement in Canada that indicates the rate of interest offered by a company on an interest-bearing deposit or a debt obligation unless the advertisement discloses, in accordance with the regulations, how the amount of interest is to be calculated.



## Advertising of Taxes

**Source:** *Provincial Sales Tax Act*, SBC 2012, c. 35 (PST)

[http://www.bclaws.ca/civix/document/id/complete/statreg/12035\\_00](http://www.bclaws.ca/civix/document/id/complete/statreg/12035_00)

*Excise Tax Act*, RSC 1985, c.E-15 (GST)

<http://laws-lois.justice.gc.ca/eng/acts/E-15/>

The Provincial Sales Tax Act states that the following advertising of taxes is prohibited:

- that the collector of the tax cannot advertise to the public that the tax will be absorbed by the collector
- will not be considered as part of the amount payable by the purchaser, or
- will be refunded.

For example:

**Pay no taxes this weekend only – can't say.  
We will pay your taxes this weekend only – okay**



The collection of taxes is mandatory for businesses, so it is arguable that businesses can't advertise, expressly or by implication, that taxes are not mandatory.

Section 223 of the *Excise Tax Act* requires a supplier to disclose to a purchaser the amount of tax charged on every transaction.

This is an accuracy in advertising issue. We aren't sure how often it is enforced, as it could be assumed that the business is accepting an amount net of tax and effectively paying the tax for the purchaser, in all circumstances in which the customer receives a "tax-free" inducement.

Helpful Resource: The Canadian Code of Advertising Standards from Advertising Standards Canada.  
<http://www.adstandards.com/en/Standards/theCode.aspx>

## Yukon

The Yukon does not charge provincial tax and does not have an applicable Act.



## Auto Advertising

**Source:** Motor Vehicle Sales Authority of British Columbia (MVSA)

<http://www.mvsabc.com/about-vsa/industry/policies>

MVSA Advertising Guidelines

[http://www.mvsabc.com/images/pdf\\_files/VSAAdvertisingGuidelines-July292009.pdf](http://www.mvsabc.com/images/pdf_files/VSAAdvertisingGuidelines-July292009.pdf)

*Motor Dealer Act*, RSBC 1996, c.316

[http://www.bclaws.ca/Recon/document/ID/freeside/00\\_96316\\_01#section13](http://www.bclaws.ca/Recon/document/ID/freeside/00_96316_01#section13)

*Motor Dealer Act Regulation*, B.C. Reg. 447/78

[http://www.bclaws.ca/civix/document/id/complete/statreg/447\\_78](http://www.bclaws.ca/civix/document/id/complete/statreg/447_78)

## MVSA Advertising Guidelines

The Registrar of Motor Dealers regulates licensed motor dealers. Motor dealers must adhere to the Advertising Guidelines in order to maintain their license and registration.

The dealer, not the publisher, is held responsible for the contents of the published advertisement.

- Any dealer advertisement or website must include the dealer's registered name and dealer number. The dealer name and number must be displayed prominently in the advertisement.
- Dealer cannot use deceptive or misleading advertising e.g. say the vehicle is of a particular standard, quality or grade if it is not.
- Use of fine print and what it can be used for is described in detail in the Advertising Guidelines.
- When the price of a vehicle is included in an ad, it must be the TOTAL price and must be prominently displayed in the ad or on the vehicle.



### Credit Advertising

- A dealer may indicate that financing on the vehicle is available by using phrases such as "financing available" or "on approved credit (OAC)" without providing further details.
- If a fixed credit agreement is advertised and information about the interest rate or amount of payment is provided, the following information must also be prominently displayed:
  - a) that the offer is for credit
  - b) the APR (annual percentage rate)
  - c) the term of the credit. Term means the period between the first advance and the end of the period during which payments are required under the credit agreement.
- more details available in section 4.2 of the Advertising Guidelines
- When advertising interest-free periods, the ad must clarify whether the period is interest-free or a grace period.
- In an interest-free period the dealer is not entitled to any interest even if the purchaser defaults on payments.
- In a grace period, the dealer may be entitled to interest if the purchaser doesn't meet the conditions of the agreement e.g. defaulting on payment.
- If the period is a grace period, the ad must include the conditions of the grace period and the APR which will apply if conditions are not met - if conditions aren't disclosed, it is assumed to represent that the transaction is unconditionally interest-free.

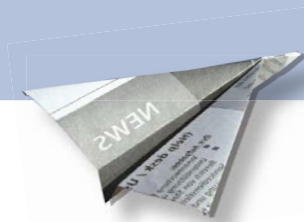
### Lease Advertising

- Whenever the details of a lease are offered in an advertisement, the following information must be prominently and clearly displayed:
  - a) that the consumer transaction is a lease
  - b) the amount of any security deposit (even where it is refundable) and applicable conditions
  - c) the type and amount of any other payments that must be made prior to, or at the beginning of the lease (including freight, pre-delivery and inspection charges)
  - d) the amount, timing and number of regular lease payments
  - e) whether or not taxes are included
  - f) the nature and amount of any payments, other than regular lease payments, that may be required under the lease including, where applicable, a buy-out amount
  - g) the APR (annual percentage rate) of the lease.

### Other

- When the fuel consumption rate is used in an ad, it must be the rate indicated on the EnerGuide label of the advertised vehicle.
- An ad that includes information about warranties must be clear in the terms of the warranty as a "manufacturer's warranty" and "extended warranty" are significantly different.
- An advertised vehicle must be in the dealer inventory at the time of the ad.
- If the ad is for a specific vehicle, the vehicle identification number (VIN) must be posted on the vehicle and in the ad.
- If a photo is used to depict the vehicle advertised, it must be the same make, model, trim package or the ad must state "vehicle not exactly as shown".
- If the ad is for a new vehicle that must be ordered from the manufacturer, this must be stated in the ad.
- If a vehicle is being sold for parts because it is not suitable for transportation, it must state "Not Suitable for Transportation" on the ad.
- A dealer must not continue to advertise a vehicle after it has been sold.
- If the vehicle is sold while the ad is in effect, the dealer must post the ad in a visible location in the showroom indicating the advertised vehicle has been sold.





- If the advertised vehicle is a consigned vehicle, it must be disclosed on the ad.
- A dealer may advertise a promotional contest that they are authorized to conduct under applicable legislation.
- An ad for a promotional contest must clearly state the conditions for participating such as requirements to qualify, chances of winning and rules, etc.

### Yukon

The Yukon does not have an applicable Act or Regulation.

## Promotional Contests

**Source:** *Competition Act*, RSC. 1985, c. C-34

The Competition Bureau

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03126.html>

**Scope:** National

**Last updated:** March 2015

The Competition Bureau is an independent law enforcement agency that claims to contribute to the prosperity of Canadians by protecting and promoting competitive markets and enabling informed consumer choice. Headed by the Commissioner of Competition, the Bureau is responsible for the administration and enforcement of the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marketing Act*.

The primary purpose of the *Competition Act* is to maintain and to encourage competition in the Canadian marketplace. Section 74.06 of the *Act* prohibits false or misleading representations and deceptive marketing practices. The *Act* applies to most businesses in Canada, regardless of size.

Section 74.06 of the *Competition Act* is a civil provision. It prohibits any promotional contest that does not disclose the number and approximate value of prizes, the area or areas to which they relate and any important information relating to the chances of winning such as the odds of winning. It also stipulates that the distribution of prizes cannot be unduly delayed and that participants be selected or prizes distributed on the basis of skill or on a random basis.

If a court determines that a person has engaged in conduct contrary to section 74.06, it may order the person not to engage in such conduct, to publish a corrective notice and/or to pay an administrative monetary penalty of up to \$750,000 in the case of a first time occurrence by an individual and \$10,000,000 in the case of a first time occurrence by a corporation. For subsequent occurrences, the penalties increase to a maximum of \$1,000,000 in the case of an individual and \$15,000,000 in the case of a corporation.

In order to satisfy the requirement of the *Act*, disclosure should be made in a reasonably conspicuous manner prior to the potential entrant being inconvenienced in some way or becoming committed to the advertiser's product or to participation in the contest. Therefore, the Commissioner does not consider it to be a form of "fair and adequate disclosure" to put the onus on consumers to obtain further details which, by statute, are required to be disclosed by the advertiser. Similarly, a contest advertised in the media should not require that a consumer visit or patronize any particular retail outlet of the advertiser, or one of its franchises, or a dealer handling only its product, in order to become adequately and fairly informed of the information required by the disclosure provisions of the *Act*.

The issue of adequate disclosure is important in relation to each of the following points:



### **Approximate Value**

Paragraph 74.06(a) of the *Act* requires disclosure of the 'approximate value' of the prizes. It is the Commissioner's opinion that this phrase would normally mean the approximate regular market value of the product. In instances where it is difficult to make such an approximation, for example, where the prize is a trip from the winner's residence (wherever that may be) to the Caribbean and the value of the prize is thus dependent upon the location of the winner in Canada, the Commissioner takes the view that inclusion of a few representative examples or of a range of possible values for the prize would meet the requirements of the section. Depending on the circumstances of each case, there may be other acceptable methods of meeting these requirements.

### **Regional Allocation**

In some contests, prizes are allocated on a regional basis, for example, one prize may be allocated for entrants from the Atlantic Provinces, one for entrants from Québec, etc., while the promotion for the contest takes place on a national basis. It is the Commissioner's view that, to meet the requirements of paragraph 74.06(a) of the *Act*, any regional allocation of prizes should be clearly disclosed.

### **Chances of Winning**

The Commissioner has also expressed the view that whenever the total number of seeded prizes in any production run or other population is known, this matter would be a 'fact within the knowledge of the advertiser that affects materially the chances of winning', and should therefore be disclosed. For example, in a contest where winning coupons are packed in specially-marked containers and the total number of specially-marked containers is known, this fact should be disclosed. Similarly, in a contest where sets of tokens under bottle caps are distributed, the availability of scarce tokens needed to complete a set should be disclosed.

### **Series of Prizes**

It should be noted that when a contest involves a series of prizes to be awarded at different times, care should be taken to ensure that the promotional material does not imply that prizes remain to be won when they have, in fact, already been awarded.

### **Early Bird Prizes**

Where 'early bird' prizes are to be awarded only to the first entrants in a contest, it is the Commissioner's view that the advertiser should disclose the starting date for the contest, in order to meet the disclosure requirement.

### **Disclosure at Point of Sale**

Where a manufacturer holds a promotional contest involving specially-marked packages of its product, the Commissioner is of the opinion that the manufacturer should ensure that proper disclosure of the contest rules is made wherever the specially-marked packages are sold. Since retailers often do not permit in-store displays promoting manufacturers' contests, manufacturers ought to provide a short list of the contest rules on the outside of each package. The consumer should not have to buy the product or tamper with it to read these rules. This short list should contain the following information: (i) the number and value of prizes, (ii) any regional allocation of prizes, (iii) the skill testing question requirement, (iv) details as to the chances of winning (a chart may simplify explanation of the chances), (v) the contest closing date and (vi) any other fact known to the advertiser that materially affects the chances of winning.

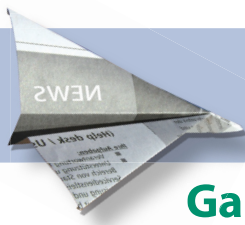
### **Purchase Requirements and Section 74.06 of the Competition Act**

Unlike the Criminal Code, section 74.06 of the *Act* does not directly prohibit a requirement that participants pay money or other valuable consideration in order to participate in a contest.

However, where a purchase is necessary in order to participate, for example, in a contest of pure skill such as a slogan-writing competition, this fact should be prominently disclosed in order to avoid giving the Commissioner reason to initiate an inquiry. Purchase requirements appearing in conjunction with contests of chance, or mixed chance and skill, are prohibited by the Criminal Code.

### **Promotional Contests**

Where no purchase is required, this fact should also be prominently disclosed in situations where failing to do so could lead those wishing to participate to make a purchase (due to a mistaken belief that a purchase is necessary in order to participate) or, alternatively, in situations where they might be discouraged from entering, thus materially affecting participants' chances of winning.



## Gambling, Includes Online

**Source:** Department of Justice: Criminal Code of Canada

<http://laws-lois.justice.gc.ca/eng/acts/C-46/page-99.html?term=gambling#s-202>

**Scope:** National (and provincial)

**Last Updated:** March 2015



The *Criminal Code of Canada* (Code) defines what types of gaming activities are legal in Canada, and the provinces are assigned responsibility to operate, license and regulate legal forms of gaming.

Part VII of the Code prohibits gaming in general, while section 207 allows for a number of exceptions to the general prohibition. Specifically, it permits 'lottery schemes' provided that they are:

- lottery schemes 'conducted and managed' by the province in accordance with any law enacted by that province
- lottery schemes 'conducted and managed' by a licensed charitable or religious organization pursuant to a license issued by a provincial authority, and provided that the proceeds of the lottery scheme are used for a charitable or religious purpose
- lottery schemes 'conducted and managed' by a licensed board of a fair or exhibition or by an operator of a concession leased by that board based upon licenses or designation of provincial cabinet

Canadian laws allow provincial governments to conduct and manage lotteries and games of chance that are operated on or through a computer, such as Internet casinos; however, in most circumstances, it is a crime in Canada for anyone else to run an online gaming operation.

Advertising of online gaming services, involving the exchange of money, according to Canadian authorities is arguably illegal. There are some who disagree, citing loopholes like the location of the hosting server, and in some of these situations while the gaming is deemed illegal by the attorney general; no legal action has been taken against the operator in some circumstances. There are not many media outlets who would risk criminal prosecution to test the validity of the would be advertiser position. It is not worth the price of the ad.

You may also want to refer to *British Columbia's Gaming Control Act*, SBC 2002, c. 14

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_02014\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02014_01)

## Multi-level Marketing

**Source:** Competition Bureau

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03035.html>

**Scope:** National

Newspaper Classifieds are popular places for multi-level marketers to seek individuals to come onboard. Their ads often talk about revolutionary new programs, how to make an amazing amount of money while working part-time from home, spend more time with your family, some say no selling involved...

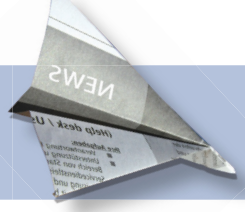
Multi-level Marketing (MLM) should not be confused with Pyramid Schemes which are illegal. The Competition Bureau's website has an extensive definition of the two.

MLM is regulated by the government.

In promoting their 'opportunity', multi-level marketers are required to disclose only the actual compensation received. So they can't advertise 'make \$8,000 a month' if it is not the 'average amount earned by participants'. In doing your due diligence before accepting these ads, you might question the amount of compensation being advertised and, you might get it in writing from the advertiser.

Newspapers may want to put these ads under 'Business Opportunity' as opposed to 'Help Wanted' as they do not 'hire an employee'. The Bureau provides 'written opinions' about specific MLM plans to allow you to ensure they meet the requirements, but getting a copy is difficult as most participants who want to advertise are far removed from the headquarters of operations (several levels down).

Newspapers may wish to decline MLM ads, unless the would be advertiser obtains and shares the "written opinion". In fact, ads can be declined for any reason or no reason at all.



## Satellite Dish Advertising

**Source:** Industry Canada

[http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/h\\_sf05562.html](http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/h_sf05562.html)

**Scope:** National

The issue is bringing in US signals. If a satellite dish system is imported and intended to be used for unlawful decoding of encrypted signals, as prohibited in section 9(1)(c) of the *Radiocommunication Act*, this constitutes an offence under section 10(1)(b) of the *Act*. It is illegal to use an American DTH satellite service (also referred to as grey market) in Canada to receive and decode encrypted programming. Doing so is in contravention of section 9(1)(c) of the *Act*.

While newspapers have not yet been pursued for publishing ads in the furtherance of an illegal scheme, the jeopardy may not be worth the price of the ad.

### Consumer Information

<http://consumerinformation.ca/app/oca/ccig/abstract.do?language=eng&abstractNo=IC000069&language=eng&text=canada&topic=CAT14.TOPICS.ROOT>

## Surrogate Mothers

**Source:** Health Canada

<http://www.hc-sc.gc.ca/dhp-mps/brgtherap/legislation/reprod/index-eng.php>

**Scope:** National

**Date:** March 2015



### Assisted Human Reproduction Act

Running an ad aimed at a couple looking to find a surrogate mother or, the other way around, a surrogate looking for a couple, poses legal issues. Basically, it's not illegal to be a surrogate, but it is illegal to pay or charge more than their expenses, or to advertise certain things about the process.

#### Reimbursement of Expenditures:

- (1) No person shall, except in accordance with the regulations and a licence,
  - (a) reimburse a donor for an expenditure incurred in the course of donating sperm or an ovum;
  - (b) reimburse any person for an expenditure incurred in the maintenance or transport of an in vitro embryo; or
  - (c) reimburse a surrogate mother for an expenditure incurred by her in relation to her surrogacy.

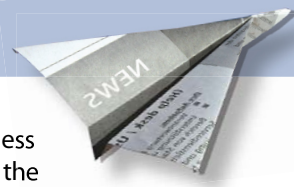
#### Receipts:

- (2) No person shall reimburse an expenditure referred to in subsection unless a receipt is provided to that person for the expenditure.

#### No Reimbursements:

- (3) No person shall reimburse a surrogate mother for a loss of work-related income incurred during her pregnancy, unless
  - (a) a qualified medical practitioner certifies, in writing, that continuing to work may pose a risk to her health or that of the embryo or foetus; and
  - (b) the reimbursement is made in accordance with the regulations and a licence.





A licensee shall not accept the donation of human reproductive material or an in vitro embryo from any person for the purpose of a controlled activity, and shall not perform a controlled activity on any person, unless the licensee has obtained from that person the health reporting information required to be collected under the regulations.

A licensee that transfers human reproductive material or an in vitro embryo to another licensee shall disclose to the other licensee the health reporting information in its possession respecting the material or embryo, and respecting the person or persons to whom the material or embryo relates, but the identity of any person – or information that can reasonably be expected to be used in the identification of a person – shall not be disclosed except in the circumstances and to the extent provided by the regulations.

Before performing an assisted reproduction procedure that makes use of human reproductive material or an in vitro embryo, a licensee shall disclose to the person undergoing the procedure the health reporting information in its possession respecting the donor, but the identity of the donor – or information that can reasonably be expected to be used in the identification of the donor – shall not be disclosed without the donor's written consent.

A licensee may disclose health reporting information to an individual or organization for scientific research or statistical purposes, other than the identity of any person – or information that can reasonably be expected to be used in the identification of any person.

The Agency shall maintain a personal health information registry containing health reporting information about donors of human reproductive material and in vitro embryos, persons who undergo assisted reproduction procedures and persons conceived by means of those procedures.

The Agency may use health reporting information, and information otherwise relating to the controlled activities undertaken by an applicant or licensee, for the purposes of the administration and enforcement of this Act or the identification of health and safety risks, potential and actual abuses of human rights, or ethical issues associated with assisted human reproduction technologies and the other matters to which this Act applies.

Health reporting information under the control of the Agency relating to a donor of human reproductive material or an in vitro embryo, a person who has undergone an assisted reproduction procedure or a person who was conceived by means of such a procedure is confidential and shall be disclosed only with the written consent of the donor or that person, as the case may be.

If you think these provisions are difficult to understand, you are not alone. Commerce beyond expense in human reproduction is generally illegal and advertising to that end is also arguably illegal. Furthermore, the process is fraught with privacy issues. Newspapers should be alive to complex issues, which arise when ads are sought to be placed respecting embryos, surrogate motherhood, or related matters.

## Sale of Firearms



**Source:** Firearms Act, SC 1995, c.39

<http://laws-lois.justice.gc.ca/eng/acts/f-11.6/>

<http://www.rcmp-grc.ca/cfp-pcaf/fs-fd/sell-vendre-eng.htm>

**Scope:** National

**Last Updated:** March 2015

The only restriction relating to advertising the sale of firearms is that the ad can't depict or promote violence. This regulation is part of the *Firearms Act* as well as a typical condition on a gun store's business licence.

Businesses and/or individuals who are properly licensed to own a firearm can advertise its sale. Ads can list such things as the make and model of a firearm, calibre, ammunition, and price.



## Wildlife Advertising

### British Columbia

**Source:** *Wildlife Act*, RSBC 1996, c. 488

[http://www.bclaws.ca/Recon/document/ID/freeside/00\\_96488\\_01](http://www.bclaws.ca/Recon/document/ID/freeside/00_96488_01)

*Wildlife Act General Regulation*, B.C. Reg. 340/82

[http://www.bclaws.ca/Recon/document/ID/freeside/26\\_340\\_82#section17.01](http://www.bclaws.ca/Recon/document/ID/freeside/26_340_82#section17.01)

*Wildlife Act Permit Regulation*, B.C. Reg. 253/2000

[http://www.bclaws.ca/Recon/document/ID/freeside/253\\_2000#section2](http://www.bclaws.ca/Recon/document/ID/freeside/253_2000#section2)

This legislation relates to display or classified ads for individuals or businesses wishing to sell wildlife products or services. Newspapers hosting advertising will want to ensure that the advertisement does not facilitate a breach of the *Act* or *Regulations*.

- It is not an offence for a person to possess:
  - antlers or a hide that is treated in a way that removes all tissues
  - wildlife that was killed lawfully outside of BC and then brought in to BC lawfully
  - dead wildlife if the person has a permit for possession
- A taxidermist, tanner, fur trader, meat cutter, or owner/operator of a cold storage plant must be licenced and maintain accurate records for a period of two years from the time he/she gives up possession of the wildlife and produce it for inspection on demand by an officer.
- Each place of business must have its own licence.
- If a person has a permit to hunt, trap or kill wildlife the permit holder must keep accurate and up-to-date record of the wildlife killed and include the following information:
  - the common name of the wildlife
  - location where the wildlife was taken
  - the date the wildlife was hunted, trapped, killed
  - the sex and age class of the wildlife taken
  - the band or tags on the wildlife
  - a description of all nests, dams or other structures destroyed or removed
- The permit holder must submit the original record to the permit issuer within 21 days of the expiry of the permit.
- The permit holder must produce a copy of the record upon demand of an officer.

### Yukon

**Source:** *Wildlife Act*, RSY 2002, c.229

*Wildlife Act Regulation*, O.I.C. 2012/84

[http://www.gov.yk.ca/legislation/legislation/page\\_w.html](http://www.gov.yk.ca/legislation/legislation/page_w.html)

Anyone who wishes to manufacture, trade, sell, or buy wildlife in any form, must possess a license issued by the Minister of Environment Yukon (Department of the Government of Yukon).

- Keep detailed records of their business as they can be asked to provide such records at any given time to a conservation officer.
- A taxidermist must not possess wildlife that belongs to another person unless the person issued a receipt in the form determined by the Minister for the wildlife and retains a copy of the receipt.
- No person shall carry on the business of processing or storing wildlife unless the person has a wildlife processing licence.
- No person shall carry on the business of wildlife research unless the person has a wildlife research permit.
- Anyone who carries on the above businesses must, in the following month, submit to a conservation officer, records of their business. In addition, anyone serving wildlife as food cannot do so with expectation of remuneration.
- Wildlife cannot be transported into or out of the Yukon without a permit or in contravention of the regulations.
- If wildlife has been transported into the Yukon, it cannot be offered for sale if the sale would not be permitted in the jurisdiction from where the wildlife was originally exported.

## Accommodations



**Source:** *Human Rights Code*, RSBC 1996, c. 210

[http://www.bclaws.ca/Recon/document/ID/freeside/00\\_96210\\_01#section8](http://www.bclaws.ca/Recon/document/ID/freeside/00_96210_01#section8)

**Last updated:** March 11, 2015

Ministry of Justice - Human Rights Protection

<http://www.ag.gov.bc.ca/human-rights-protection/index.htm#>

BC's *Human Rights Code* prohibits discrimination in housing based on 11 grounds:

*Race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, gender, sexual orientation or age.*

The *Code* protects freedom of expression of opinion. However, section 7 of the *Code* says that it is discriminatory for a person to publish or display any notice that indicates discrimination or any intention to discriminate against a person or class of persons based upon a prohibited ground or an analogous ground. For example, it is discriminatory for a landlord to place an ad that says things like:

*No children; Must have working income/provide proof of employment; Single tenant only.*

These statements suggest an intention to discriminate and that some people will not be allowed to rent a property.

Other ads include statements that may reflect a landlord's honest efforts to attract people they believe would be most interested in the rental unit. For example:

*Ideal for quiet couple or professional single; Perfect for female student.*

Even if these landlords don't intend to discriminate, the ads suggest that some people may be screened out. They express an intention to discriminate and may open the advertiser to an unpleasant Human Rights complaint.

The *Human Rights Code* applies to 'independent units' and does not apply if:

- the space is a shared accommodation and in such a case the advertiser has a right to choose who they wish to live with
- the building is a senior's building, where every unit is reserved for persons over the age of 55
- the rental unit is designed to accommodate persons with disabilities and can be offered for rent exclusively to a person with a disability

Here are some suggestions for best practices for rental housing print ads:

- Add a non-discrimination clause to hard copy or online forms by which landlords place ads, listing the prohibited grounds of discrimination under the *Code*.
- If you have online information describing how to place an ad with your paper, include a link to the Human Rights Protection information sheets on how to avoid writing discriminatory housing ads (<http://www.ag.gov.bc.ca/human-rights-protection/index.htm#>).
- Have staff who deal with ads read the Human Rights Protection information sheets, so they can better identify and address discriminatory ads before they go to print.
- Print a statement on your classifieds page(s) about discriminatory ads, advising readers to contact you if they have a concern.
- Ensure that staff members who handle complaints from the public are aware of the issue so they can respond appropriately to related complaints.



## Yukon

**Source:** *Human Rights Act*, RSY 2002, c. 116

Human Rights Commission

<http://www.yhrc.yk.ca/>

Yukon's *Human Rights Act* prohibits discrimination in housing based on 11 grounds:

*Ancestry including color and race; national origin; ethnic or linguistic background or origin; religion; age; gender; sexual orientation; disability; criminal charges or record; political beliefs or associations; marital and family status; course of income; actual or presumed association with individuals.*

The Yukon does not have a section in the *Human Rights Act* which prohibits discrimination through publication of advertisements but it can be inferred that if people are prohibited from discrimination on the above grounds, then a newspaper must also not allow publication of discriminating material. In any event, the advertiser might thank the paper for the suggestion that the ad not “flag” discrimination.



## Employment Advertising

**Source:** *Human Rights Code*, RSBC 1996, c. 210

[http://www.bclaws.ca/Recon/document/ID/freeside/00\\_96210\\_01#section8](http://www.bclaws.ca/Recon/document/ID/freeside/00_96210_01#section8)

**Last updated:** March 11, 2015

Ministry of Justice - Human Rights Protection

<http://www.ag.gov.bc.ca/human-rights-protection/pdfs/EmployerInfo.pdf>

Human Rights Tribunal - Special Programs Policy

[http://www.bchrt.bc.ca/policies/special\\_programs\\_policy.htm](http://www.bchrt.bc.ca/policies/special_programs_policy.htm)

As in the Accommodation advertising section, newspapers are held liable to the Human Rights Tribunal for offenses when it comes to Employment advertising. Newspaper staff should read all the copy of employment ads – classified ads, classified display ads and online advertising.

Under section 11 of the *Code*, the right to equal treatment in employment is infringed when a job posting or advertisement directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.

Make sure that job ads and postings comply with the *Code*. Job ads and postings should not express a limitation, specification, or preference as to race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, or age, unless the limitation, specification, or preference is based on a legitimate occupational requirement.

Advertisements for jobs should not include neutral requirements that may be discriminatory barriers and result in human rights complaints. For example, it may be a bona fide requirement that a receptionist speak clear, intelligible English, but it is not acceptable to require “unaccented English.” If it is essential that the person must drive for the job, the ad may state that a valid driver's license (with the required class) is required.



The following checklist provides general guidelines to follow when preparing/reviewing a job ad:

- Is non-discriminatory wording used to describe the job?
- Are the essential duties of the job clearly explained?
- Has neutral language such as “sales clerk” rather than “salesman” been used wherever possible?
- Is there a statement that the employer is an equal opportunity employer and that challenges or disabilities will be accommodated? (optional)

### **Potentially discriminatory requirements**

This section shows requirements that could lead to discrimination claims, and that should not be included in an advertised description of the hiring process without careful thought:

**Functional fitness assessments:** Applicants should not have to undergo a fitness assessment unless:

- the requirement is made in good faith and inclusively designed
- it is rationally connected to performing the essential duties of a job
- accommodation is built into the assessment.

**Testing and simulations:** Any tests and simulations should be reasonable and bona fide to be reliable indicators of job performance. For example, psychometric and psychological testing may favour the dominant culture. A written test for a job that does not need writing skills may screen out persons who speak English or French as a second language.

**Non-essential physical demands:** No matter what the job, every job has a physical aspect to it. Physical demands that are not essential should not be included in a job description or mentioned in advertising as a basis for evaluating applicants.

**Requirement to have a driver's licence:** A driver's licence contains personal information, such as age or disability. Employers should identify the jobs where driving is an essential requirement and make sure this is included in the job description.

**Language and fluency:** A job description that requires a certain level of fluency in English or any other language, or prohibits an accent, may be discriminatory if these are not bona fide requirements for performing the job.

**“Canadian experience:”** A requirement for Canadian experience may be a prohibited limit on applications from recent immigrants, and could result in a complaint of discrimination on the basis of race, place of origin or ethnic origin. All prior experience should be assessed, regardless of where it was obtained. In many cases, there are easy ways to assess a person's skills and abilities without having to contact a Canadian reference or insist on Canadian experience.

**Inflated job requirements:** Inflated job requirements can pose discriminatory barriers for applicants of some racial origins in some contexts and/or may pose barriers for others such as people with disabilities. An example might be requiring a university degree when a high school diploma would do.

**Specifying desirable personality traits:** This approach can screen out or discourage persons identified by the *Code*. For example, stating that sales people must demonstrate “career potential” could screen out older applicants and discriminate on the basis of age.

The employer should avoid stating that an applicant has to be in “good physical condition” to be successful, even if there is a bona fide requirement that an applicant take a fitness assessment.

**Frequent travel:** If employees have major caregiving responsibilities, their ability to travel regularly or extensively may be limited. When travel is included in a job description, it must be an essential duty that is a bona fide requirement.

**Recent graduates or students:** A requirement that an applicant be a recent graduate or a student may limit applications from older workers. This may amount to discrimination on the basis of age, unless such requirements are bona fide, connected to a special program or a *Code* exemption applies.

### **Special Programs**

Section 42 of the *Code* permits special programs in employment that would otherwise infringe the *Code*.



Special programs help people who experience discrimination, economic hardship or disadvantage due to their race, colour, ancestry, place of origin, physical or mental disability, sexual orientation or gender. Special programs counter the effects of discrimination through measures that create jobs, provide specialized services or other opportunities.

It is important to make sure that people know that a special program exists, and that there are restrictions or limits on who is eligible to apply for such a job, or who is entitled under a special program to get certain services.

Example: A job program for people under 25 is put into place to combat youth unemployment. The job ad for this program should clearly explain to potential applicants or to the public that the position is part of a special program designed to help youth under age 25.

## Yukon

**Source:** Human Rights Act, RSY 2002, c. 116  
Human Rights Commission  
<http://www.yhrc.yk.ca/>

The Yukon relies on the *Human Rights Act* which does not have regulations on employment advertisement. However, discrimination is prohibited and publication of discriminating material is also prohibited.

The *Human Rights Act* also provides for Special Programs under s. 13. Special programs are affirmative action programs designed to reduce disadvantages suffered by a group that experiences discrimination. Advertisements for employment of such groups are not prohibited.

Complaints can be made to the Yukon Human Right Commission [http://www.yhrc.yk.ca/5-hr\\_complaints.htm](http://www.yhrc.yk.ca/5-hr_complaints.htm)

## Identity Theft and Privacy

**Source:** *Criminal Code*, RSC 1985, c. C-46  
**Scope:** National

There are a number of potential classified ads surfacing that are suspicious in nature.

Please ask your classified staff to pay extra attention to classified ads via e-mail or online order forms for wholesale electronics, such as phones, TVs, or musical instruments. Always verify the contact information through a "snail mail" address and a telephone number, even if the credit card approval is initially confirmed. Verification can be as simple as calling the phone number provided; Googling the phone number or e-mail address provided; a Reverse look-up for phone number or address on 411.ca; or a domain registration search for a web address.

You may want to consider this or a similar process for any employment ads from outside your own community, as well as for pet ads.

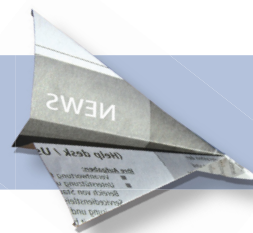
Employment ads are a way to obtain personal information from a resume or CV. For example, an advertiser claimed to be recruiting waitresses for an anticipated opening of a "hooters" franchise. Such an advertiser should be asked for more than an email address, to protect gullible readers. The scammers sometimes offer someone a job via e-mail and ask for their banking information so they can be paid with direct deposit. Before long their identity is stolen and loans and credit cards taken out in their names or worse.

The pet ads propose to send a pet to a new owner after they've sent money via Western Union or some other wire service.

Other questionable classifieds are apartments or houses for rent. Scammers will take potential renters to a vacant unit, get first and last month's rent in advance. On moving day, multiple renters all show up to move in and all have been taken.



## Misleading Ads



**Source:** Competition Bureau

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02776.html>

**Scope:** National

**Last Updated:** April 2015

This is a great site for newspaper and website advertising staff to view from time to time for educational purposes to see the companies that have been prosecuted and what they have done.

The site covers: false and misleading representations, false or misleading ordinary selling price representations, performance representations not based on adequate and proper tests, sale above advertised price, bait and switch selling, and testimonials. The legislation engaged by these practices has been updated to include online advertising.

You can also visit [www.phonebusters.com](http://www.phonebusters.com) which is the Canadian Anti-Fraud Centre. Its site will keep you updated on the latest scams.

Also see Consumer Information at <http://www.consumerinformation.ca/eic/site/032.nsf/eng/home>

From time to time your editorial staff and reporters should speak with your advertising staff. Not only does reporting on scams serve to protect the reader but it also contributes to a sense of community and stimulates human interest.

## Sale of Cemetery Plots

**Source:** *Cremation, Interment and Funeral Services Act*, SBC 2004, c.35

[http://www.bclaws.ca/Recon/document/ID/freeside/00\\_04035\\_01](http://www.bclaws.ca/Recon/document/ID/freeside/00_04035_01)

*Business Practices And Consumer Protection Act*, SBC 2004, c. 2

[http://www.bclaws.ca/Recon/document/ID/freeside/04002\\_00](http://www.bclaws.ca/Recon/document/ID/freeside/04002_00)

Consumer Protection BC

<http://www.consumerprotectionbc.ca/consumers-alias/consumers-find-a-licensed-business>

The *Cremation, Interment and Funeral Services Act* does not instruct on what advertisement is permitted for places of interment.

Operators of cemeteries can sell a right to interment. A Right of Interment is the right to either have your own remains or those of someone you designate interred in a specific location, rather than purchasing the grave itself. The land and control over that land remains the property and responsibility of the cemetery. A Right of Interment does not include anything related to the preparation of the site to receive a deceased, placement of the deceased, closing the interment site or any equipment, labour or products required to perform the services needed when doing an interment.

Depending on the Municipality, when a Right of Interment can be bought varies. Some cities allow a Right of Interment to be bought years in advance, for purposes of pre-planning. Other cities like North Vancouver will only sell a Right of Interment when a loved one has passed away and interment arrangements are made.

A Right to Interment cannot be sold privately and if any arrangements change then the Right can be surrendered back to the City for a refund less administration fees. Each cemetery operates under different bylaws. All cemeteries must be licensed to operate in BC.

Consumer Protection BC regulates Cemetery and Funeral Services in BC. A search of licensed operators can be performed at <http://www.consumerprotectionbc.ca/businesses-cemetery-and-funeral-home/employee-search>

Under the *Business Practices And Consumer Protection Act*, businesses such as a cemetery, must not publish deceptive or misleading advertisement. According to the *Act*, an advertiser who publishes a deceptive or misleading advertisement, provided by a supplier, is not liable if it can be proven that the advertiser did not know and had no reason to suspect that its publication was misleading or deceptive. It is the responsibility of the newspaper to maintain a record of the name and address of the supplier who provides the advertisement.

### Yukon

**Source:** *Cemeteries and Burial Sites Act*, RSY 2002, c.25

The *Cemeteries and Burial Sites Act* does not advise on the sale of burial plots or advertising guidelines. No other applicable information is available on the subject.



**Community  
Newspapers  
Association**  
British Columbia & Yukon

## **BRITISH COLUMBIA & YUKON COMMUNITY NEWSPAPERS ASSOCIATION 2015 MEMBERS**

100 Mile House Free Press	Invermere, The Valley Echo	Revelstoke Times Review
Abbotsford News	Kamloops This Week	Richmond News
Agassiz-Harrison Observer	Kelowna Capital News	Richmond Review
Alaska Highway News	Keremeos, The Review	Rocky Mountain Goat
Alberni Valley News	Kimberley Daily Bulletin	Rossland News
Alberni Valley Times	Kitimat, Northern Sentinel	Saanich News
Aldergrove Star	Ladysmith-Chemainus Chronicle	Salmon Arm Observer
Ashcroft-Cache Creek Journal	Lake Cowichan Gazette	Salmon Arm, Shuswap Market News
Boundary Creek Times	Lakeshore News	Salt Spring Island, Gulf Islands Driftwood
Bowen Island Undercurrent	Langley Advance	Sechelt / Gibsons Coast Reporter
Bridge River / Lillooet News	Langley Times	Sicamous, Eagle Valley News
Burnaby NewsLeader	Maple Ridge-Pitt Meadows News	Sidney, Peninsula News Review
Burnaby Now	Maple Ridge-Pitt Meadows Times	Smithers, Interior News
Burns Lake / Lakes District News	Merritt Herald	Sooke News Mirror
Campbell River Courier-Islander	Mission City Record	Squamish Chief
Campbell River Mirror	Nakusp, Arrow Lakes News	Summerland Review
Campbell River North Island Midweek	Nanaimo Daily News	Surrey, North Delta Leader
Castlegar News	Nanaimo News Bulletin	Terrace Standard
Chilliwack Times	Nelson Star	The Chilliwack Progress
Cloverdale Reporter	New Westminster NewsLeader	The Local
Columbia Valley Pioneer	New Westminster Record	The Mirror
Comox Valley Echo	North Shore News	The Northerner
Coquitlam, Tri-City News	North Thompson Star/Journal	The Now Newspaper, serving Surrey, White Rock and North Delta
Courtenay / Comox Valley Record	North Thompson Times	The Prince George Citizen
Cranbrook Daily Townsman	Northern Connector	The Tri-Cities Now
Creston Valley Advance	Oak Bay News	Tofino-Ucluelet Westerly News
Delta Optimist	Oliver Chronicle	Trail Daily Times
Duncan Cowichan Valley Citizen	Osoyoos Times	Tumbler Ridge News
Duncan, Cowichan News Leader Pictorial	Parksville Oceanside Star	Valemount/McBride, Valley Sentinel
Elk Valley Herald	Parksville/Qualicum Beach News	Vancouver Courier
Fernie Free Press	Peace Arch News, White Rock/South Surrey	Vanderhoof, Omineca Express
Fort Nelson News	Peachland View	Vernon, Morning Star
Fort St. James Caledonia Courier	Penticton Western News	Victoria News
Gabriola Sounder	Pique News Magazine	WE Vancouver
Golden Star	Port Hardy, North Island Gazette	Westside Weekly
Goldstream News Gazette	Powell River Peak	Whistler Question
Grand Forks Gazette	Prince George Free Press	Whitehorse, Yukon News
Haida Gwaii Observer	Prince Rupert, The Northern View	Williams Lake Tribune
Hope Standard	Princeton, The Similkameen Spotlight	Winfield, Lake Country Calendar
Houston Today	Quesnel, Cariboo Observer	



