

“fortuitous events and irresistible forces” – why Quebec residents are excluded from many sweepstakes

“I don’t understand we are a part of Canada why do they not include us?”

The above quote is courtesy of a blog poster with the alias “Chad” in response to a discussion on the exclusion of Quebec residents from a “Win an Apple iPad” promotional contest sponsored by RedFlagDeals.com and managed by Sympatico.ca. As most Canadian businesses who have run a promotional contest in Canada will tell you, the answer to Chad’s question is that, in many cases, the time, paperwork and fees necessary to comply with Quebec’s contest laws outweigh the benefits of opening the contest to Quebec residents. There are no similar contest laws in any other Canadian province, though the *Criminal Code of Canada* and the *Competition Act* govern the operation of promotional contests at a federal level.¹

The Régie des alcools, des courses et des jeux, the board established by the Quebec government to regulate alcohol, races, gambling, combat sports, publicity contests and drawings (the “Régie”) has jurisdiction over all “publicity contests,” a broadly defined term that includes most commercial contests open to the public where a prize is awarded (with the exception of contests run exclusively for employees of an organization). If Quebec residents are eligible for a contest where the total value of the prizes awarded exceeds \$2,000, then the contest promoter must receive authorization from the Régie in order to carry-out the contest and comply with a wide range of requirements, including the requirement to provide contest rules and regulations, as well as promotional materials pertaining to the contest in French.

¹ A full discussion of the federal provisions are beyond the scope of this bulletin, but for more information and a comprehensive review of contest law in Canada, please see the following Powerpoint presentation prepared by Bill Hearn, Co-Chair of the Advertising and Marketing Group entitled *Taming the Contest Beast - Canadian Law & Practice*

The following are the main aspects of Quebec contest laws that you need to know prior to opening up a contest to Quebec residents²:

1. A publicity contest notice must be filed with the Régie at least 30 days before the contest launch.³
2. The text of the contest rules and any promotional materials must be filed with the Régie at least 10 days before the date on which the contest is publicized (except for certain television and radio advertisements of the contest where the text can be filed within 5 days after the launch of the contest).
3. The contest rules must be accessible to the public and must include a number of provisions including, but not limited to, the conditions for entering the contest, the mode of entry, deadlines, details regarding the prizes, and the statement that “Any litigation respecting the conduct or organization of a publicity contest may be submitted to the Régie des alcools, des courses et des jeux for a ruling. Any litigation respecting the awarding of a prize may be submitted to the Régie only for the purpose of helping the parties reach a settlement.”
4. Promotional materials regarding the contest must not be misleading. In particular, they should not falsely imply that a person has won a prize may enter a contest for the purposes of receiving a prize or being able to win a prize if all contest entrants receive a prize, simply by entering. Promotional materials must further reference the number, description, range and value of the prizes (i.e. the smallest and the largest) value of the prizes to be awarded), as well as indicate, where the contest rules may be obtained.
5. If participation in the contest requires that a good or service be purchased, a skill-testing requirement must be satisfied before the winner may claim his prize. Contest rules and promotional materials must specify the nature of this skill-testing requirement, if applicable.
6. The following fees are payable to the Régie, at least 30 days⁴ before the contest is set to begin:
 - a. a fee of 10% of the total value of the prizes awarded for contests that are exclusive to Quebec residents;
 - b. a fee of 3% of the total value of the prizes awarded for national contests that include Quebec residents; or

² If the total value of the prizes awarded for the contest is over \$100 but less than \$2,000, then the contest promoter only needs to comply with items 1 and 4 to 6.

³ The 30 day notice is required for contests where the total value of the prizes offered is over \$1,000. If the total value of the prizes offered is under \$1,000, then the notice may be filed 5 days before the contest is launched. In such cases, the fees are payable upon the filing of the notice and there is no need to file contest rules or promotional materials or to submit a report to the Régie after the contest has terminated.

⁴ For contests where the total value of the prize is less than \$1000, the fees are payable with the filing of the notice (as mentioned above).

- c. a fee of 0.5% of the total value of the prizes awarded for all other contests (i.e. contests that are international in geographical scope) that include Quebec residents.
7. If the value of any prize offered to a Quebec resident exceeds \$5,000, the total value of the prizes offered to Quebec residents exceeds \$20,000 or the contest promoter does not have a place of business in Quebec, a security bond needs to be filed with the Régie either by filing a letter of security or depositing a sum of money with the Régie or in a trust account at a financial institution.
8. The Régie has authority to determine if the contest rules may be changed or cancelled once the contest has started. Changes or cancellations will only be allowed if the public is not adversely affected or where the cancellation or change results from a “fortuitous event” or “irresistible force”.
9. The Régie has jurisdiction to mediate disputes over contests.
10. A detailed written report needs to be filed with the Régie, by the promoter within 60 days following the date on which the winner is named.
11. All contest entry forms need to be kept for 120 days following the draw date unless otherwise determined by the Régie.
12. Failure to comply with the laws is an indictable offence and may result in fines levied against both the company and the individuals who authorize, acquiesce or participate in the offence.

These laws are intended to protect Quebec residents from dodgy contest sponsors and ensure that the contest process is carried out as advertised, however, it is questionable whether these laws are necessary given that:

- most contest sponsors are legitimate;
- contest sponsors who carry out the promotion in a manner that is perceived to be unfair have to deal with the consequences of a backlash from an angry public if they do not live up to their word in awarding prizes, especially in this age of consumer empowerment through the internet generally and specifically social networking sites such as Facebook and Twitter (see the 2009 Nissan Hypercube contest as an example⁵); and
- the *Competition Act* and *Criminal Code of Canada* provisions already provide a sufficient deterrent and consequences for illegitimate contest promoters.

Compliance with Quebec contest laws requires contest promoters to plan in advance to meet the Régie’s filing and security deadlines, pay extra fees, file extra

⁵ See http://www.marketingmag.ca/english/news/marketer/article.jsp?content=20091030_113411_5528 for a full description of the Hypercube contest, including the reasons why certain aggrieved losing contestants created a vicious website alleging improprieties on the part of the contest promoters and filed a complaint to the Competition Bureau (though none of the allegations have been proven in Court and no enforcement action has been taken against the administrator or sponsor of the contest).

paperwork, as well as to assign some control over how the contest is carried out and disputes resolved, to the Régie. As a result, many Quebec residents such as “Chad” are unfairly excluded from participation in various contests. If Quebec contest laws were repealed or amended to be more business-friendly (i.e. if they only applied to contests targeted solely to the Quebec market), most contests would likely be open to all Quebec residents, as businesses would be keen to engage a market representing nearly a quarter of the Canadian population. However, as long as these laws are in place, many businesses will continue to conduct the cost-benefit analysis and come to the same conclusion as Cisco, the multinational giant that recently promoted a global contest with a grand prize of \$250,000 for the budding entrepreneur who could come up with the best new business idea; Quebec residents were the only people in the world excluded from eligibility for participation in the contest, aside from residents of politically sensitive countries such as Cuba, Iran, Syria, North Korea, Myanmar, and Sudan.⁶

by Les Chaiet, Maya Damoun and Enda Wong

⁶ Quebec is not the only jurisdiction that imposes contest disclosure, registration and other contest requirements on contest promoters, as several US states and other countries such as France, the UK and Australia regulate such sweepstakes. However, Quebec appears to be the only jurisdiction excluded for non-political reasons.

Below are some additional bulletins written by our Quebec Consumer Law group that may be of interest you:

- [Quebec Introduces Gift Card Legislation: Part of the modernization of Quebec’s Consumer Protection Act](#)
- [Amendments to Québec’s Consumer Protection Act: A Brief Synopsis of the Upcoming Changes](#)
- [Quebec Company Sentenced to pay 2 Million Dollars in Punitive Damages](#)

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a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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