

Promotional Games and Contests

Background

Contests, sweepstakes, and giveaways (**contests**) in Canada are governed by a number of laws and regulations, including the federal *Criminal Code* and *Competition Act*. This guidance document aims to provide members of the university community with an overview of the university's obligations under these laws and regulations when organizing and carrying out any contest. This guidance document does not provide legal advice; if you require legal advice with respect to organizing and carrying out a contest, please reach out to the Office of the General Counsel.

Note that additional and/or separate laws and regulations apply to contests that include minors (persons under the age of majority); contests that involve alcohol; and contests available to participants who reside in the province of Quebec. This guidance document applies only to contests available to persons who have reached the age of majority in British Columbia (19 years old) and who do not reside in Quebec; and that do not involve alcohol.

Overview and Contest Rules Checklist

Criminal Code Requirements

- Skill testing question
- No purchase method of entry

Competition Act Requirements

- Disclosure of:
 - Number and approximate value of prizes
 - Regional allocation of prizes (if applicable)
 - Chances of winning
 - Contest timeline, including timeline and process for selecting winners

Other Requirements

- Exclusion of Quebec residents
- Personal information collection notice
- Winner confirmation and release

Additional Best Practices (see below for more detail)

- ❖ Release of university
- ❖ Ability to:
 - cancel or postpone contest
 - modify contest rules
 - substitute prize
- ❖ Intellectual property terms (if applicable)

Contest Rules

Many of the requirements that apply to contests can be satisfied with a carefully crafted set of contest rules, which take into account the requirements of applicable law and include some additional measures that mitigate risk to the university.

Criminal Code Requirements

Skill Testing Question

The *Criminal Code* prohibits “illegal lotteries”. Contests of pure chance – such as prize giveaways to winners selected by random draws – are considered to be illegal lotteries.

To avoid this prohibition, a skill testing question should be added to random draw or first come, first serve contests. This turns the contest from a game of pure chance to a game of mixed skill and chance. Usually, organizers will use a multi-step mathematical question that prospective participants are required to answer, without help.

Note that contests of pure skill – such as a photography or drawing contest – are also acceptable under the terms of the *Criminal Code*, but other requirements relating to disclosure about how judging will work (i.e. the criteria considered, what tie-breaker applies if two or more participants are given the same score, etc.) apply and must be satisfied.

No Purchase Entry Option

The *Criminal Code* also considers any contest that includes, as a requirement to enter, a participant to pay money, or “other valuable consideration”, to be an illegal lottery. “Other valuable consideration” could include requiring the participant to do something in which they give up something of value as a condition of their entry into the contest, like completing a survey (here, the prospective participant would be giving up time and possibly personal information).

Organizers should therefore provide for a “no purchase necessary” method of entry. In the survey example, organizers could ask prospective participants to complete a survey to enter, but they should also allow prospective participants to enter the contest without completing the survey at all. There should not be any disadvantage to entering the contest via the no purchase necessary method (for example, participants who filled out a survey should not get two chances at the prize, whereas the participants who entered by the no purchase necessary method only receive one), nor should the participants be distinguished from each other in any other way (for example, all participants should be included in the same draw).

Competition Act Requirements

Disclosure

The *Competition Act* requires contest organizers to disclose certain contest details to participants. Contest rules must therefore include a description of:

1. the number and approximate value of the prizes;
2. the regional allocation of prizes (if any); and

3. the chances of winning.

Note that this disclosure has to be made in a way that does not inconvenience the prospective participant. Therefore, prospective participants should not, for example, be required to visit a particular location or send a requesting e-mail in order to access the contest rules.

Prompt Prize Distribution

The *Competition Act* also requires that the distribution of prizes must not be “unduly delayed”. The contest rules should therefore describe contest opening and closing time and date; and the process and timeline that will be used to select winners.

Other Requirements and Considerations

Specifically Exclude Quebec

As noted above, contests open to residents of Quebec must satisfy the requirements of the *Régie des écoles, des cours et des jeux*. Unless contest organizers have obtained specific advice from the Office of the General Counsel and University Secretary regarding these requirements, contest rules must specifically exclude Quebec residents from participating.

Privacy

A contest organizer will likely have to collect personal information of participants to administer the contest. The contest rules must therefore include a collection notice in the form required by the *British Columbia Freedom of Information and Protection of Privacy Act*, which describes the authority under which the participant’s personal information is being collected and the manner in which it will be used. See [here](#) for further information.

Other Risk Mitigation

Contest rules should also include some terms that protect the university, such as terms that:

- require the participant to release the university from any and all liabilities they may incur from their entry and participation in the contest;
- allow the university to cancel or postpone the contest, and/or modify the rules; and
- allow the university to substitute a prize (or part of a prize), including with cash in the amount of the stated value of the prize.

Contest winners should also be required to sign a confirmation and release, in which they confirm that they meet the contest eligibility criteria (at minimum, that they are at least 19 years of age and are not a resident of Quebec); confirm that their receipt of the prize satisfies the university’s obligation to them with respect to the contest; and release the university from any and all liabilities they may incur from use of the prize.

Intellectual Property

If a contest involves participants submitting their own content (such as a photo of themselves wearing SFU-branded merchandise), intellectual property issues – such as ownership and use of the content; representations and warranties regarding the content; and a waiver of moral rights – must be considered and set out in the contest rules.

Anti-Spam Requirements

Note that *Canadian Anti-Spam Legislation (CASL)* applies to “commercial electronic messages” that are sent to electronic addresses. While “electronic addresses” are generally thought of as e-mail addresses, they could include instant messaging accounts and social media accounts. If contest organizers intend to communicate with participants – for example, to send continued promotions or invitations to future contests – the rules of CASL, which at a high level include obtaining express prior consent to those communications and the availability of an unsubscribe mechanism in the communications, must be followed. For more information, see [here](#).

Social Media Platform Requirements

If the contest will be carried out on any social media platform, such as Facebook, Instagram, or Twitter, the applicable platform likely has its own requirements that apply to its use in a contest. These requirements should be consulted and followed.