MEDIA GUIDE

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ONTARIO COMMUNITY NEWSPAPERS ASSOCIATION

OCNA IS DEDICATED TO INDUSTRY EDUCATION

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Ontario Community Newspapers Association

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preface

The Ontario Community Newspapers Association is grateful to Media Lawyers Stuart Robertson and Douglas Richardson of the Toronto law firm O'Donnell, Robertson & Sanfilippo for their contributions to the editorial legal chapters of this Media Guide. Their passion for the newspaper business and enthusiasm for different industry initiatives is appreciated by the association and its members.

This Media Guide is a result of the professionalism and dedication for continual education of those working at Ontario's community newspapers. Their many queries about what they are and aren't allowed to publish have lead to the compilation of this booklet. Produced by the Ontario Community Newspapers Association on behalf of its member newspapers, the association wanted to create a centralized source of information as a useful training and educational document for editorial, advertising and production departments. This will help them to understand why and where 'the rules' come from.

Please note: This Media Guide is not a legal document, rather it is intended for information and referral purposes only. When dealing with matters for publication in your own newspapers, always refer to the most recent version of the associated guidelines or laws and seek 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 legally allowed or required to do. When issues occur, liability can be placed on the advertiser and/or the newspaper, so your knowledge is vital to protect your newspaper. Ask questions of your advertisers, ignorance isn't a defence. Due diligence on your part may be taken into consideration if there is an issue. Newspapers have the right to refuse advertising.

If member newspapers download this file onto their computers, please refer to the OCNA web site from time to time as this file will be updated and replaced online. Your input is valued, so please contact the association with comments and other suggestions for future versions.

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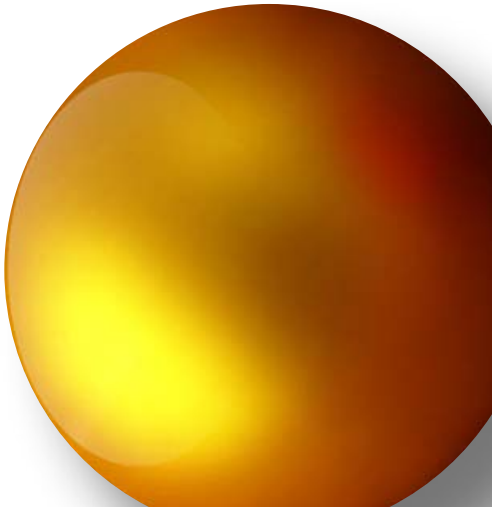


copyright

Copyright is a monopoly granted by federal statute in Canada to the creator of original literary, dramatic, artistic or photographic works. That person (or her/his employer) 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.

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. And so 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. (OCNA has sample Freelance Agreements available.)

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 he/she can be expected to have 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 done 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.
- 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 use. But something on the page should be 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 of the appearance of the article on the Internet that it is there 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.
- 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 and 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 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 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.

So, 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. 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.

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

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;
- **Proximity to trial.** The closer the trial date, 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 of innocence of an accused then it is more likely to be in 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.

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 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.
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.
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.
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 Trials	Mandatory order (if asked for by witness under 18) 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 most likely 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 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 not 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 must 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. 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 company can be given proper notice and the time necessary to get counsel before the court to argue on the newspaper's behalf.

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. In the federal statute governing the youth court structure, 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	Can Identify	Federal government believes 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 **and court gives an adult sentence**	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 **and court gives a youth sentence**	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 **young persons** 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 a "young person" varies by province but is defined in the applicable Ontario law as a person 12 years and over but under 16.**

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 and Family Services and Family Relations Act – s. 10(2) 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 (Discretionary 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. (Discretionary 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)	(Discretionary 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 is communicating something disreputable 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, any such disreputable information is presumed to be false and its communication is deemed to have damaged 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 in your newspaper or on the Internet, you should be certain that at least one of the following situations apply or could apply should you need to defend it –

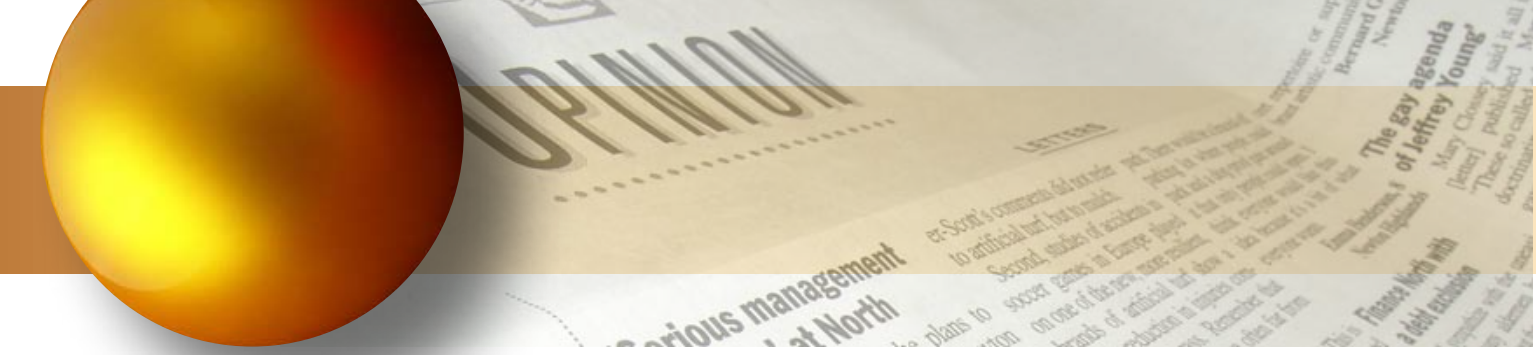
* the disreputable words are true, or constitute a fair comment on facts in the article that are themselves true – see TRUTH and FAIR COMMENT below; or
* the information is being communicated in a situation where the public has a proper and democratic right to be informed of it – reporting on public events, courts, legislatures, municipal councils, press releases, press conferences, etc – see REPORTING PUBLIC EVENTS below; or
* the person to whom the disreputable 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 direct witnesses to the 'fact' and/or original documents that display 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 in court.

FAIR COMMENT

If what you intend to publish is instead a comment, you will need to make certain of the following – (i) the comment must obviously be a comment (using verbs that make it very clear the statement is commenting on facts), (ii) the comment must relate to true facts (see 'Truth' above) that are in the publication or which 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 share in relation to the proven facts, and (v) the person making the comment was not motivated by an intent to harm the person about whom the comment is made or by a reckless disregard for the truth about her/him.

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 verbs comes in and including the facts on which the comment is based.

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 open court or legislative proceedings, press conferences or press releases from government and public meetings. In those public situations, something disreputable may be said or stated about someone. You will not incur any liability in defamation law for publishing the disreputable information or 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 on 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 disreputable 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 disreputable tells you it is okay if you do. 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.

RESPONSIBLE COMMUNICATION ON A MATTER OF PUBLIC INTEREST

There are situations where something is brewing in your community and disreputable 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 above defences on which to base your approach to reporting on this matter. 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 disreputable 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 –

(a) the more serious the allegation of disreputable conduct or attitude, the more rigorous should be your due diligence in checking the allegation;

(b) in your view the story and the allegation is 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) if getting to the person about whom the allegation is made will add to the fairness of the story then you must make all reasonable efforts to get that person's input for your story;

(e) the disreputable 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; and

(f) whether it is clear to the readers that the newspaper is not taking sides and that the readers can be expected to perceive that the purpose to publish the story is to report on the dispute and not to report the disreputable conduct or attitude. The best way to assess this last factor listed above 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."

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 a third party 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.

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 sense of confidence in persons accessing such boards, the operators take on liability for the content as far is 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.

Take down – You should be well prepared in advance to deal with allegations of defamatory content in your online service because, when they appear, you have very little time to react and to get it right. When you receive the 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 – You should always have some record of who posts comments on your bulletin board or your website. The issue is when must you disclose the identities. If you say on your website that you won't release names voluntarily, then don't. You must release them 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 (a person posting a comment who does put the author's name in the posting itself may be in a position to say that you have breached a contract with the person posting the comment or even breached confidentiality).

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 in the letter any statement

that might lower the reputation of anyone, you should see whether you have any evidence to prove the truth any of the facts in the letter containing the defamation and that any defamatory comment is clearly based on true facts stated in the letter.

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, 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

Before you publish such claims, you should check the facts the same way you would in any article or letter to the editor.

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 incented 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 to it the same prominence as the original item (i.e. same size headline and font). It is usually preferable to negotiate the actual appearance of the follow-up publication and so you should discuss the best approach to positioning 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[1]. In most jurisdictions, newspapers have some or all of the following special rights - (i) short 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 publish a retraction; and (v) the right to have damages against them mitigated by any other award of damages or compensation paid to other defendants for the same libel.

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 not misinformed 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 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 Ontario Limited. And so in this example, the Notice should identify 128674 Ontario 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 serve a notice of libel and/or statement of claim.)

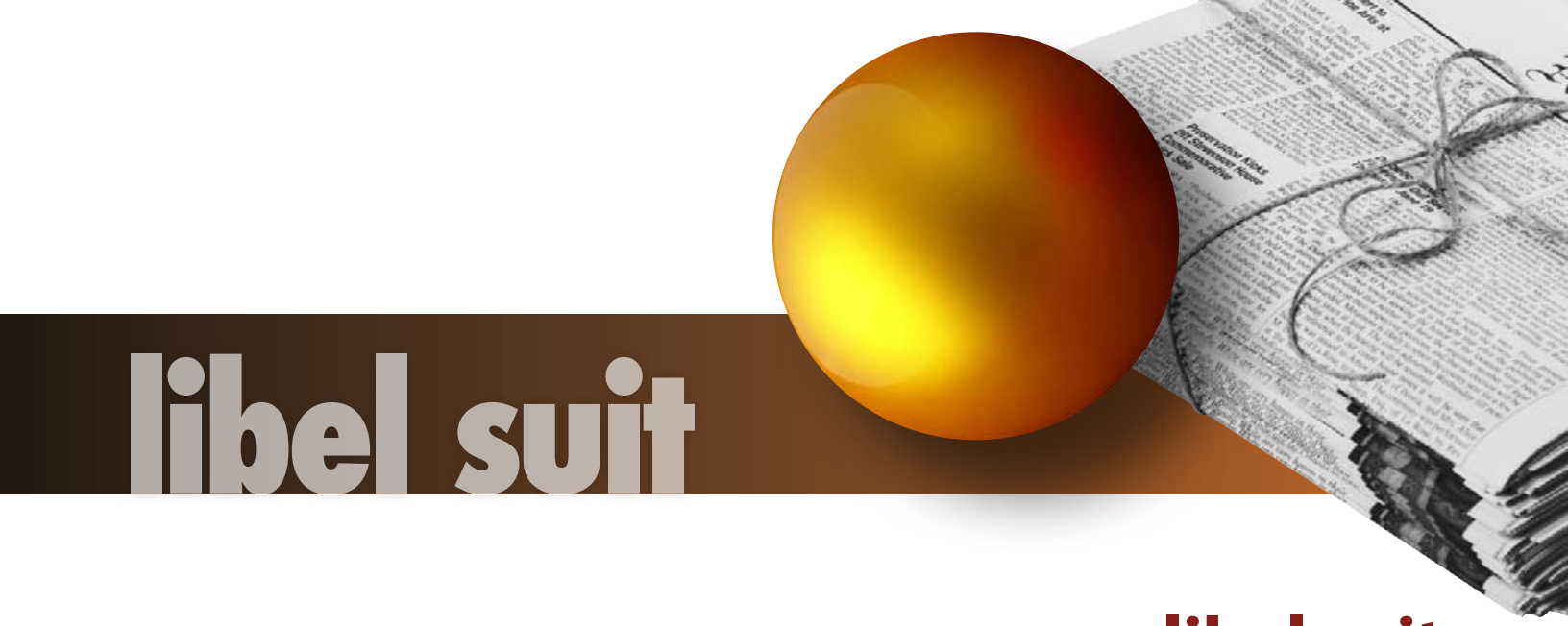
Where do you place the Notice? Newspapers in the provinces of British Columbia, Ontario, Prince Edward Island and Saskatchewan must place the Notice either (i) on the front page of the newspaper, or (ii) above the lead editorial on the editorial page. (Comment - the positioning may seem out-of-date or inconsistent with the newspaper's layout and design – but it is a legal requirement nonetheless.) See the chart that follows.

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.

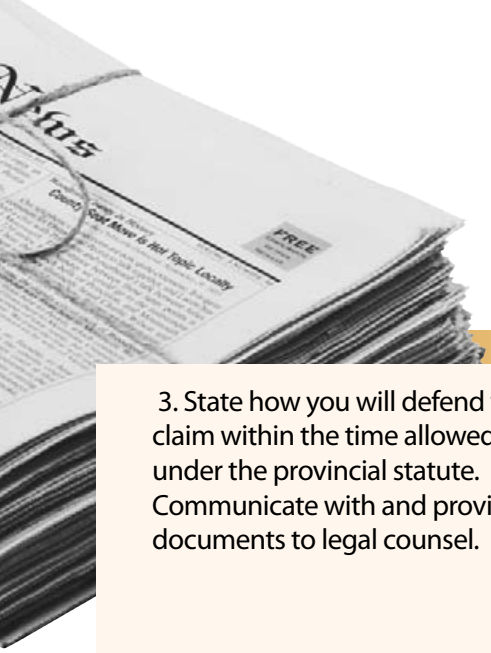
What about your website? The statutes have not yet addressed the issues arising from the advent of the Internet. However, the courts have had to deal with defamation cases in relation to articles published on the Internet and they have ruled the web versions of your newspapers are as much newspapers 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 might 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. However, the cost in arguing and winning that point can be devastatingly high.



libel suit

PUBLISHER ("YOU")	LEGAL STEPS	COMMENT
1. You receive a libel notice. 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. See previous chart. Notify insurer. Confirm insurance coverage.	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.	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 aggravate the damages already suffered by a plaintiff.
2. Receives a **Statement of Claim.** Gather the documents and notify the staff and author of the suit. Confirm insurance coverage regarding the claims in the Statement of Claim.	Notify Insurer. Usually have 20 days to respond. If more time is required, usually can serve Notice of Intent to Defend which extends the period for serving and filing a defence for 10 more days. Lawyer's client is usually the Insurer. Often the Insurer asks legal counsel to prepare a budget and Litigation Plan for the defence of the claim.	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.



3. State how you will defend the claim within the time allowed under the provincial statute. Communicate with and provide documents to legal counsel.	Prepare, serve and file **Statement of Defence** and Affidavit of Documents. Legal counsel must consider whether you should be claiming over 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. Legal counsel must also determine whether the Statement of Claim needs to be clarified in some if you are to respond to it – i.e. whether you will be demanding particulars of the claim; or whether certain portions of the Statement of Claim should be removed from it. Either of the parties may serve on the other party a notice indicating the trial will be by jury – i.e. a **jury notice**. This issue may be litigated if necessary.	The plaintiff will understand your defence and will see the documents on which you relied in preparing your publication. You will see the documents on which the plaintiff will rely. 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.
4. Consider your position in face of seeing the plaintiff's claim and documents. Consider the possibility of making a **settlement offer.** You 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)	Legal counsel to advise re legal consequences of making offers to settle.	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. Making an offer to settle does not necessarily show weakness. It can be a strong, strategic move to apply pressure on the other party.
5. In superior court, the next step is to examine the other party on its case and documents. In Small Claims Court, there is no discovery. Instead, the court will set a date for a Settlement Conference in the presence of a judge.	To determine the strategy of 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.	

6. You should consider the benefits in trying to have a **mediation** of the claim.	Legal counsel to advise whether and when to pursue settlement of the claim through mediation. In some jurisdictions, mediation is mandatory.	Mediation does not always result in an agreement to settle the case.
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.	Legal counsel must prepare documentation which the mediator can to use in finding an effective resolution the parties can agree upon.	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.
8. Prepare to be examined for **discovery** under oath. Submit to discovery.	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 move before the court for an order compelling an answer.	What transpires on discovery can be used at the trial of the action, but cannot be disclosed outside the court process. The preparation and execution of the discovery process is very time-consuming and therefore very 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.
9. Prepare for a formal effort by the court to settle the matter – **Pre-Trial.**	Counsel will prepare a brief for the court to explain your position after the pleading and discovery phases.	Just as with mediation, it is only the parties who decide if the matter will settle before judgment. This pre-trial stage is important because a professional judge will wade in and see if your case is worthy of taking up the court's time for a trial. The instincts of judges at this stage are often very constructive when you are considering your next move.
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.**	Counsel must consider and seek instructions regarding calling expert witnesses as well the strategy to be pursued at trial. On the conclusion of the trial a verdict is given by the judge. The court then deals with the issue as to how much of the winner's legal costs must be paid by the losing party.	Trial preparation is very complicated and deliberate. It takes a lot of time. Trials are open to the public as are the decisions of the courts. If the identify of a journalist's sources is relevant to the proceeding, the court can order the journalist to identify her/his sources at trial.

advertising alerts

Copyright in Advertising

Source: Copyright Act
http://laws-lois.justice.gc.ca/eng/acts/C.html
Scope: National
Last Updated: January 2013

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

Unless stipulated otherwise in your advertising contract with your advertiser, the creator/author of the ad material (the newspaper, not person employed to create it) owns the copyright.

Often misunderstood by advertiser who thinks that if they pay for the ad to appear in the newspaper, they own the copyright of the ad.

Many newspapers have written agreements with neighbouring papers where they pay a nominal production charge and exchange artwork at the advertiser's request to assign the right to reproduce.

Tobacco Advertising

Source: Tobacco Act, Canada
http://laws-lois.justice.gc.ca/eng/acts/T-11.5/page-6.html#docCont
Scope: National
Last updated: January 2013

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 eighty-five 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 an 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 use foreign ads, campaigns or information to promote their products or bands 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.

Alcohol Advertising

Source: Alcohol and Gaming Commission of Ontario (AGCO)
http://www.agco.on.ca/en/whatwedo/advertising_liquor.aspx
Scope: Ontario
Last updated: January 2013

- Alcohol and Gaming Commission of Ontario (AGCO) governs this Act.
- Public Notices have been vetted by the government's advertising agency, re new licences.
- Local Advertising is of concern. The Act regulates the holder of the licence or the manufacturer. Most newspaper advertising is generated from licence holders, eg bars and restaurants.
- An advertisement cannot promote excessive consumption or depict excessive or prolonged consumption, or excessive quantity of liquor, or occasions of use or drinking situations, which are likely to involve risk to those present. An example of excessive consumption, which cannot be implied, is consumption of more than three drinks on an occasion.
- Advertisements may not make claims, direct or implied, of healthful, nutritive, curative, dietetic, stimulative or sedative benefits of the liquor product. However, factual attributes of the liquor product which are commonly accepted by recognized authorities (such as the Centre for
- Addiction and Mental Health, Health & Welfare Canada, or national or provincial medical associations) may be stated in the advertisement provided the attributes relate to the particular brand or type of liquor and

does not promote the consumption of liquor in general.

- Endorsement of a liquor product by well-known personalities shall not directly or indirectly suggest that the consumption of any liquor has contributed to the success of their particular endeavours.
- No well-known personality may be used in liquor advertising who may reasonably be expected to appeal, either directly or indirectly, to persons under the legal drinking age if the advertisement contains any direct or indirect endorsement of liquor or the consumption of liquor.
- This may include historical, political, religious and cultural figures as well as celebrities and sports figures. (This would not apply to public service advertisements provided there is no direct or indirect endorsement of liquor or consumption of liquor by the well-known personality.)
- Pricing is now permitted, with specific guidelines.
- Although obtaining the prior approval of the Alcohol and Gaming Commission of Ontario (AGCO) for advertising by holders of liquor sales licences or manufacturers of liquor is not necessary, it is their responsibility to ensure that advertising carrying its business or brand name, or endorsed by it, falls within the parameters set out in the regulations and in these guidelines. Proposed advertising should be considered on the basis of both the express as well as any implied message, which is conveyed. The guidelines apply to all aspects of the advertisement such as the more obvious copy, graphics, lyrics, script and video, as well as the less obvious but influential aspects such as background music, voice inflection, etc.
- Advertising that is beyond the permissible scope may result in disciplinary proceedings being initiated by the Registrar of Alcohol and Gaming and/or the issuance of an order of cessation by the AGCO Board. Violations of the LLA or the regulations enacted there under may result in compliance or enforcement action.

Classifieds and Announcements – Special Occasion Permits, eg Buck and Doe:

- Changes took effect July 2012.
- The holder of a Liquor Sales Licence may apply for an SOP for Private Events for such things as staff parties, family parties, stags, and private receptions, provided the event is not advertised to the general public, limited to invited guests and there is no intention to gain or profit from the event.
- http://www.agco.on.ca/en/whatwedo/permit_special.aspx
- Newspapers have been contacted when in contravention to these guidelines, and permits have been pulled when guidelines are not met.

Elections

Source:
Ontario Municipal Elections
http://www.mah.gov.on.ca/Page219.aspx
Governed by the Ministry of Municipal Affairs and Housing

Ontario Provincial Elections
http://www.elections.on.ca/en-ca
Governed by Elections Ontario

Canadian Federal Elections
www.electionscanada.ca
Governed by Elections Canada

Last updated: January 2013

All three levels of government have different advertising guidelines and editorial coverage restrictions. OCNA distributes this material to members prior to each election, but the requirements can also be found online. Points to consider for each election:

- Are there blackout periods prior to elections being called and/or on the day of polling, and what types of news coverage and ads are permitted during the blackout?
- Is there is a requirement to include who is paying for the ads, whether it be political offices or 'registered' third party, in the body of the ad?
- Advertising rates offered to candidates have to be the same earned rate offered to other clients
- Are there restrictions regarding online ads during any blackout period, and do they have to be removed by polling day?
- Newspapers must maintain accounting records
- Editorial – do you have written policies in effect regarding such things as election coverage, the publishing of letters to the editor during a campaign,
- Know the laws regarding photography (still and video) at polling stations and access to polling stations
- Know the laws in regards to opinion surveys and the publishing of their results.

Municipal Government Advertising

Source: Municipal Act, Ministry of Municipal Affairs and Housing
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm
Scope: Ontario
Last updated: January 2013

When dealing with municipalities some staff may still be referring to the former Interpretation Act that was repealed in 2007. That Act's definition of "newspaper" for advertising purposes said, in a provision requiring publication in a newspaper, means a printed publication in sheet form, intended for general circulation, published regularly at intervals of not longer than a week, consisting in great part of news of current events of general interest and sold to the public and to regular subscribers.

The association was successful in having this repealed as 'sold to the public and to regular subscribers' was no longer the industry norm and shouldn't be used to define newspapers.
The Legislation Act defines "newspaper", in a provision requiring publication, means a document that,

(a) Is printed in sheet form, published at regular intervals of a week or less and circulated to the general public, and
(b) Consists primarily of news of current events of general interest; ("journal")

The Municipal Act in its latest version calls for municipalities 'to provide notice' and the Act gives their councils the ability to define how to best accomplish this through the creation of Policies (section 270). You should ask to see their Policies to see what is written there.

POLICIES

Adoption of policies

270. (1) A municipality shall adopt and maintain policies with respect to the following matters:

1. Its sale and other disposition of land.
2. Its hiring of employees.
3. Its procurement of goods and services.
4. The circumstances in which the municipality shall provide notice to the public and, if notice is to be provided, the form, manner and times notice shall be given.
5. The manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public.
6. The delegation of its powers and duties. 2006, c. 32, Sched. A, s. 113.

Policies of local boards

(2) A local board shall adopt and maintain policies with respect to the following matters:

1. Its sale and other disposition of land.
2. Its hiring of employees.
3. Its procurement of goods and services.

Also the Municipal Act, section 238, (see 2 and 2.1) outlines how the municipality's Procedure By-law must outline how they govern meetings and provide notice of them. Your editorial team should be aware of this.

Major Sporting Franchises

Source: National Football League
http://nflcommunications.com/
Broadcast Law Blog
http://www.broadcastlawblog.com/2009/01/articles/intellectual-property/dont-use-super-bowl-in-an-ad-without-permission-but-how-about-in-other-programming/
Scope: National
Last updated: January 2013

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 maybe 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 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 federally 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 and advertisers may not use these terms in their promotions.

SUMMARY OF TRADEMARKS:

YOU CAN'T PRINT:	**YOU CAN PRINT:**
'Super Bowl'	'The Big Game in Miami'
'Super Sunday'	'The Football Championship Game'
'NFL, NFC, or AFC'	The date of the game
Any specific team name or nickname	The names of the team's home cities
Any NFL logo or uniform	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: January 2013

Like the NFL information above, the CFL has trademarks on CFL, Grey Cup, its team names and mascots.

Source: National Hockey League
http://www.nhl.com/ice/page.htm?id=26389
Scope: National
Last updated: January 2013

NHL, the NHL Shield, the word mark and image of the Stanley Cup, and NHL Conference logos are 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, the Services and the Content are the property of the NHL and the respective NHL member clubs or are licensed to the NHL Parties and may not be reproduced without the prior written consent of the NHL Enterprises.

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

For all leagues, all instances are highly monitored and acted upon.

Source: Canadian Olympic Committee
http://olympic.ca/brand-use
Scope: National
Last updated: January 2013

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 highly 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 impair 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
Scope: National
Last updated: January 2013

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 public laws govern 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.

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 the 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 fl at 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.

Mortgages, Loans and Financial Services

Mortgage Brokerages, Brokers and Agents

Source: Mortgage Brokerages, Lenders and Administrators Act
http://www.fsco.gov.on.ca/en/mortgage/Pages/default.aspx
Scope: Ontario
Last updated: January 2013

The Financial Services Commission of Ontario licenses mortgage brokers, agents, brokerages and administrators in Ontario. Licensed mortgage professionals have met specific education, experience and suitability requirements. When accepting ads from this group ask for their Licence # and search it on this web site for verification.

A person who acts as a mortgage agent or broker as of July 1, 2008 without being licensed is guilty of an offence under the Mortgage Brokerages, Lenders and Administrators Act, 2006, (MBLAA), and may be prosecuted for such violation.

The Mortgage Brokerages, Lenders and Administrators Act, 2006 and regulations, prohibit:

- Trading or dealing in mortgages without a licence – as of July 1, 2008, all Mortgage Brokerages, Administrators, Brokers and Agents must be licensed with FSCO to carry on business in Ontario, unless an exemption applies.

- Using an unauthorized name – you can use only the name in which you are licensed.
- Collecting advance fees for mortgages of $300,000 or less – if the principal amount of the mortgage is $300,000 or less, the Mortgage Brokerage cannot require or accept an advance payment/deposit for services to be rendered and expenses to be incurred by the Brokerage or any other person.
- Receiving funds from investors/lenders in advance – the Mortgage Brokerage cannot receive funds from an investor unless an existing mortgage is available, or from a lender unless a mortgage application has been made on a specific property.
- Indicating that Mortgage Brokerage fees are approved by the government – you cannot claim that Mortgage Brokerage fees are approved by a government authority. The only exception is fees under the Land Titles Act or the Registry Act.
- Offering guarantees to lenders/investors – you cannot offer a guarantee to a lender/investor regarding a mortgage loan or mortgage investment.
- Engaging in tied selling – borrowers/lenders/investors cannot be required to obtain a product or service as a condition for obtaining another product or service from the Mortgage Brokerage.
- Acting for a borrower/lender/investor if you believe a mortgage is unlawful.

Loan Brokers

Source: Payday Loans Act
http://www.search.e-laws.gov.on.ca/en/isysquery/339f9700-be56-4584-8873-602116b9fbb6/3/doc/?search=browseStatutes&context=#hit1
Scope: Ontario
Last updated: January 2013

This Act applies to advertisers who promote loans to your readers. They must be licensed through the Ontario Ministry of Consumer Services. When accepting ads from these companies, you should ask for their licence number and search it online at http://www.consumerbeware.mgs.gov.on.ca/esearch/start.do for verification.

No person or entity shall act as a lender unless the person or entity is licensed as a lender; and no person or entity shall act as a loan broker unless the person or entity is licensed as a loan broker.
If the Registrar believes on reasonable grounds that a licensee is making a false, misleading or deceptive statement relating to a payday loan or a payday loan agreement in any material published by any means, including an advertisement, circular or pamphlet, the Registrar may,

(a) order the cessation of the use of the material;
(b) order the licensee to retract the statement or publish a correction of equal prominence to the original publication; or
(c) order both a cessation and a retraction or correction.

Offence

A person or entity is guilty of an offence who, (a) furnishes false information in any application under this Act or in any statement or return required under this Act; (b) fails to comply with any order under this Act; (c) contravenes or fails to comply with any section of this Act or the regulations; or (d) attempts to commit any offence mentioned in clause (a), (b) or (c) above.

Corporations: An officer or director of a corporation who fails to take reasonable care to prevent the corporation from committing an offence mentioned in subsection (1) is guilty of the offence.

Penalties

A person or entity that is convicted of an offence under this Act is liable to, (a) a fine of not more than $50,000 or to imprisonment for a term of not more than two years less a day, or both, if the person or entity is an individual; or a fine of not more than $250,000, if the person or entity is not an individual.

Advertising of Taxes

Source: Retail Sales Tax Act (pst) and Excise Tax Act (gst)
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90r31_e.htm#BK26
http://laws-lois.justice.gc.ca/eng/acts/E-15/
Scope: Ontario for pst and National for gst
Last Updated: January 2013

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 they can't advertise that they are not.

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

This may be more of an accuracy in advertising issue. We aren't sure how often it is enforced as it could be assumed that the business is paying the tax for the purchaser.

http://www.adstandards.com/en/Standards/theCode.aspx
This is a link to the Canadian Code of Advertising Standards from Advertising Standards Canada. Helpful resource.

Auto Advertising

Source: Ontario Motor Vehicle Industry Council
http://www.omvic.on.ca/services/shared/industry_regulation/standards_business_practice.htm

Used Car Dealers Association of Ontario
http://www.ucda.org/DealerInfo/Advertising.aspx

And the Motor Vehicle Dealer Act –
http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_080333_e.htm#BK47
Scope: Ontario
Last updated: January 2013

OMVIC Advertising Guidelines

What's in a Name?

Under the MVDA, dealer ads must include the dealer's registered name and business telephone number in a clear and large enough to be easily read manner. If there is limited space then the ad must at least include the word 'Dealer' in the advertisement.

'Used' Vehicles

If the vehicle advertised is not new and is the current or previous model year, the ad must specify that the vehicle is 'Used'.

All-in Pricing

Means, whether you advertise a vehicle price in print, on TV, radio, the internet or at your lot, the price must include all fees, charges or levies (like safety, e-test, admin. fees, freight, pdi, pde) except HST and the cost of licensing which can be declared by saying in the ad "tax and licensing extra".

'As Is'

If you have a car that you do not plan to recondition, certify or e-test, and you don't want to guarantee it for a buyer, you may consider selling it 'as is'. When price advertising an 'as is' vehicle, OMVIC says the ad must clearly state:

"This vehicle is being sold 'as is', unfit, not e-tested and is not represented as being in a road worthy condition, mechanically sound or maintained at any guaranteed level of quality. The vehicle may not be fit for use as a means of transportation and may require substantial repairs at the purchaser's expense. It may not be possible to register the vehicle to be driven in its current condition."

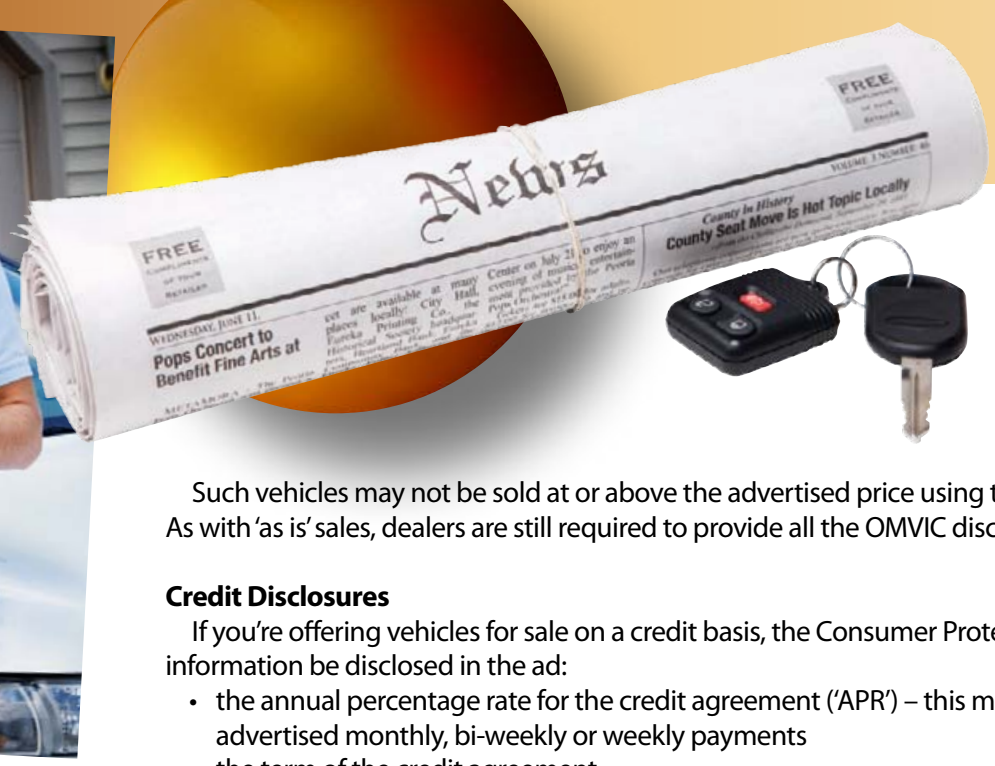
Dealers are still required to provide all the OMVIC disclosures on the sale of an 'as is' vehicle.

Vehicles advertised without certification or e-test

This is not the same as an 'as is' sale, you would, for example, know at least enough about the vehicle to have a good idea what it will cost to certify and e-test and you will have responsibility for its quality and basic suitability as a means of transportation. When advertising a vehicle for a price that does not include safety certification and/or e-testing, the ad must clearly state:

"Vehicle is not drivable, not certified and not e-tested. Certification and e-testing available for $xxx."

If you offer safety and/or e-test services, the cost must be disclosed in the above statement and it must not be a mandatory charge ... the purchaser must have the right to choose whether to have their own safety and e-test if they prefer.



Such vehicles may not be sold at or above the advertised price using the 'as is' clause on the bill of sale. As with 'as is' sales, dealers are still required to provide all the OMVIC disclosures on these sales.

Credit Disclosures

If you're offering vehicles for sale on a credit basis, the Consumer Protection Act, 2002 requires the following information be disclosed in the ad:

- the annual percentage rate for the credit agreement ('APR') – this must be disclosed as prominently as the advertised monthly, bi-weekly or weekly payments
- the term of the credit agreement
- the cash price of the vehicle
- the 'cost of borrowing'

Lease Disclosures

If you're offering vehicles for lease, the Consumer Protection Act, 2002 requires the following information be disclosed in the ad:

- that the offer is a lease
- the monthly, bi-weekly or weekly payments
- the term
- the annual percentage rate for the lease, this figure must be disclosed as prominently as the advertised monthly, bi-weekly or weekly payments
- the amount of each payment to be made by the lessee before or at the beginning of the lease, examples include:
- down payment
- security deposit
- the amount of any other payment the lessee will be required to make in connection with the lease, if this amount cannot be determined, then dealers must disclose how this amount will be determined, examples include:
- end of lease obligations
- for leases with kilometre allowances of less than 20,000kms per year, the excess kilometre costs, for example:
- 18,000kms/year, $0.20/km for excess

What if I'm advertising on radio or billboard, where there are time or space limitations?

When advertising with limited space, the following information is required, as long as consumers are directed to another source* for the remaining details:

- that the offer is a lease
- the term
- the monthly, bi-weekly or weekly payments
- down payment and/or security deposit

Examples of acceptable sources include: dealer website, toll free phone number with a pre-recorded message, advertisement in a local paper, this only applies to term and interest rate

PLEASE NOTE: "see dealer for details" is not acceptable, but can include toll free number and say "call for details".

Promotional Contests

Source: Competition Act, The Competition Bureau
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01279.html
Scope: National
Last updated: January 2013

The Competition Bureau is an independent law enforcement agency that contributes 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 Marking Act.

The purpose of the Competition Act is to maintain and to encourage competition in the Canadian marketplace. Section 74.06 is one of the false or misleading representations and deceptive marketing practices provisions of the Act. These provisions aim to promote fair competition in the marketplace by discouraging deceptive business practices and by encouraging the provision of sufficient information to enable informed consumer choice. 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 orders, 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.

Section 74.06 and subsection 74.1(1) of the Act read as follows:

In order to satisfy the requirement of the provision, disclosure should be made in a reasonably conspicuous manner prior to the potential entrant being inconvenienced in some way or committed to the advertiser's product or to 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 provision.

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

3.1 Approximate Value

Paragraph 74.06(a) of the Act requires the 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 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 the range of possible values of 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.

3.2 Regional Allocation

In some contests, prizes are allocated on a regional basis, for example, one 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.

3.3 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.

3.4 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.

3.5 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.

3.6 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 to winning.

4.2 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. It is recognized that purchase requirements often appear in conjunction with contests of chance or mixed chance and skill, which are prohibited by the Criminal Code.

Promotional Contests 7

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: January 2013

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, 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

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 illegal. There are some who disagree, citing loopholes like the location of the hosting server, while deemed illegal by the attorney general; no legal action has been taken. There are not many media outlets who would risk criminal prosecution to test the validity of this position.

You may also want to refer to the Ontario Lottery and Gaming Corporation (OLGC) Act
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_99o12_e.htm

Hides and Antlers

Source: Government of Ontario
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_97f41_e.htm#BK56
Scope: Ontario
Last updated: January 2013

This legislation would relate to classified ads for individuals or businesses wishing to sell cast antlers or the hides of black bears, white-tailed deer or moose that have been lawfully killed.
Ontario legislation restricts the number of hides and antlers that can be bought or sold at any given time.

Updated Legislation can be found online at e-laws.

Fish and Wildlife Conservation Act, 1997

Ontario REGULATION 666/98
POSSESSION, BUYING AND SELLING OF WILDLIFE
PART VII
BUYING AND SELLING HIDES AND CAST ANTLERS

21. Despite subsection 48 (1) of the Act, a licence to sell game wildlife is not required if,

(a) A hunter sells the hide of a black bear, white-tailed deer or moose that he or she has lawfully killed or cast antlers;
(b) A trapper sells the hide of a black bear that he or she has lawfully killed or cast antlers;
(c) A person sells not more than a single hide and a single set of cast antlers in a year, if they were lawfully acquired.

22. Despite subsection 48 (1) of the Act, a licence to buy game wildlife is not required if,

(a) A person buys a single hide or a single set of cast antlers in each year for his or her own use;
(b) A person accepts delivery of hides or cast antlers outside Ontario, if they were obtained from a person who sold them under a hides and cast antlers dealer's licence; or
(c) A person trades or barters the hides for a token of little or no value as part of a program approved or sponsored by the Ministry to facilitate the provision of hides to artisans.

23. A person who holds a hides and cast antlers dealer's licence may,

(a) Buy hides and cast antlers from a person who lawfully sells them; or
(b) Sell hides and cast antlers to a person who lawfully buys them.

24. (1) The holder of a hides and cast antlers dealer's licence shall record the following information on each purchase of a hide or cast antlers:

1. The date of the purchase.
2. The name and address of the person from whom the hide or cast antlers are being bought.
3. If the hide is bought from a licensed hunter or trapper, the number of the licence under which the game mammal was killed.
4. If the hide is bought from a person who is not a licensed hunter or trapper, the kind of document and its number, if any, under which the game mammal was lawfully acquired.

5. If the hide or cast antlers are bought from another holder of a hides and cast antlers dealer's licence, the number of that dealer's licence.
6. The number of hides bought and the species of animal involved.
7. The number of cast antlers and the species of animal involved.

(2) The holder of a hides and cast antlers dealer's licence shall record the following information at the time of tanning or treating a hide, of selling or otherwise disposing of a hide and at the time of treating cast antlers or selling or otherwise disposing of cast antlers:

1. The date of the tanning, treating, selling or other disposal.
2. The name, address and licence number of the holder of a hides and cast antlers licence to whom the hides or cast antlers were sent for tanning or treating, or both, as the case may be, or were sold or disposed of.
3. The number of hides sent for tanning or treating, sold or otherwise disposed, and the species of animal involved.
4. The number of cast antlers sent for treating, sold or otherwise disposed of.

Firewood

Source: Canadian Food Inspection Agency (CFIA)
http://www.inspection.gc.ca/plants/plant-protection/directives/forestry/d-03-08/eng/1323821135864/1323821347324
Scope: National
Last updated: January 2013

This legislation would relate to classified and display advertising selling firewood in parts of the country impacted by the spread of the Emerald Ash Borer. Check online to see if your newspaper distributes into one of the impacted areas.

There are two types of penalties that can be issued for those who violate the *Plant Protection Act:*

- Immediate penalties of up to $15,000 may be issued. Administrative Monetary Penalties (or AMPs) are basically tickets used to encourage compliance and deter repeated offences. They can be issued to individuals or businesses under the Agriculture and Agri-Food Administrative Monetary Penalties Act.
- A penalty of up to $250,000 and/or imprisonment for a term not exceeding two years. This involves a prosecution, where the individual or business is charged with an offence under the Act. Prosecution under the Act is usually used to penalize repeated non-compliance or for serious violations.

D-03-08: Phytosanitary Requirements to Prevent the Introduction Into and Spread within Canada of the Emerald Ash Borer

The federal government has strict regulations about the movement of firewood in regards to areas impacted by the emerald ash borer (EAB) and other pests, so in some areas you cannot advertise certain woods for sale, even for firewood.

Firewood is a high risk commodity for the spread of EAB. Domestic movement out of the regulated area is prohibited. Domestic movement of non-ash firewood out of regulated areas is only permitted by facilities registered under the emerald ash borer approved facilities compliance program (EABAFCP) in accordance with the interim firewood module.

Importation of firewood to all species from regulated states in the US is prohibited.

To slow the spread of EAB to new areas, the CFIA uses measures to control the movement of potentially infested materials. People who move regulated materials from regulated areas without permission of the CFIA could face fines and/or prosecution.

A list of EAB regulated areas in Canada can be found at:
http://www.inspection.gc.ca/english/plaveg/pestrava/agrpla/regrestrice.shtml

The EAB has killed millions of ash trees in southwestern and eastern Ontario. It poses a major economic and environmental threat to urban and forested areas. The EAB attacks and kills all species of ash, except mountain ash which is not a true ash. Slowing the spread of EAB will protect Canada's environment and forest resources. It also helps keep international markets open to the forest industry and nurseries in non-regulated parts of Ontario and Quebec and in the rest of Canada.

The government also has a list of approved facilities/companies who comply with regulations which can be found online The Emerald Ash Borer Approved Facility Compliance Program (EABAFCP) has been developed to mitigate the spread of EAB in Canada while facilitating the movement of regulated articles. It is a voluntary, audit-based program focused on domestic movement and importation of regulated articles from the continental United States. http://www.inspection.gc.ca/plants/plant-protection/directives/forestry/d-03-08/compliance-program/eng/1349100647331/1355880297595

For general information on EAB, see:
http://www.inspection.gc.ca/english/plaveg/pestrava/agrpla/agrplae.shtml

Please note that the movement of firewood may also be restricted because of pests of concern other than EAB. The following quarantine pests are regulated to prevent further spread:

- Brown Spruce Longhorn Beetle
- Dutch Elm Disease
- European Larch Canker
- Gypsy Moth
- Pine Shoot Beetle
- Asian Long-Horned Beetle

Multi-level Marketing

Source: Competition Bureau
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03035.html
Scope: National
Last updated: January 2013

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 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, and you question the amount of compensation being advertised, 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' of MLM plans to ensure they meet the requirements, but getting a copy is difficult as most participants who want to advertise are so far removed from the operations.

Satellite Dish Advertising

Source: Industry Canada
http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/h_sf05562.html
Scope: National
Last updated: January 2013

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.

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

Accommodations

Source: Ontario Human Rights Commission
http://www.ohrc.on.ca/en/issues/housing/medialetter
Scope: Ontario
Last updated: January 2013
Ontario's *Human Rights Code* prohibits discrimination in housing based on 14 grounds:

Family status	Marital status	Age
Sexual orientation	Creed (religion)	Receipt of public assistance
Disability	Race	Colour
Ancestry	Citizenship	Ethnic origin
Sex (including gender identity and pregnancy)		Place of origin

The *Code* protects freedom of expression of opinion. However, Part 1 and section 13(1) of the *Code* say it is discriminatory for a person to publish or display any notice that shows the intention of the person to infringe a right. 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	No Ontario Works or ODSP [Ontario Disability Support Program]

These statements suggest 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. Act applies to 'independent units' and not to Shared Accommodation ads where a person has the right to choose who they live with.

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 OHRC fact sheet on writing non-discriminatory housing ads
- Have staff who deal with ads read the OHRC fact sheet, 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 staffs who handle complaints from the public are aware of the issue so they can respond appropriately to related complaints.

Also, if your publication has both print and online classified housing ads, then all of the suggestions for housing websites would be relevant to the online aspect of your operations.

Employment Advertising

Source: Ontario Human Rights Commission
http://www.ohrc.on.ca/en/human-rights-work-2008-third-edition
Scope: Ontario
Last updated: January 2013

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

Advertising

Under section 23(1) 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.

a) Make sure that job ads and postings comply with the Code Job ads and postings should not contain statements, qualifications or references that relate either directly or indirectly to race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, record of offences, age, marital status, family status or disability.

Some ads may not mention a ground of the Code directly, but may unfairly prevent or discourage people from applying for a job. 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 and bona 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 accommodation will be provided during the hiring process?

b) Advertise widely using diverse means

The best practice is to widely circulate formal job postings, which clearly describe the position and

qualifications (see Section IV-2 – "Setting job requirements" for more information about job descriptions). For example, employers can place ads in newspapers, on websites and through employment agencies so postings are readily available to persons identified by Code grounds.

c) Potentially discriminatory requirements
This section shows requirements that could lead to discrimination claims, and that should not be included in a 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 used 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 another 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 limit applications from recent immigrants, and could result in 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 pose discriminatory barriers for racialized applicants and others such as people with disabilities. An example is 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 be "aggressive" could screen out racialized women, and saying people must demonstrate "career potential" could screen out older applicants.
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.

Citizenship requirements: Section 16 of the Code allows an employer to discriminate based on citizenship in three very specific situations:

- when citizenship is a qualification or requirement imposed or authorized by law
- when the requirement for Canadian citizenship or permanent residency in Canada has been adopted to foster and develop participation in cultural, educational, trade union or athletic activities by Canadian citizens or permanent residents
- when the employer imposes a preference that the chief or senior executives be, or intend to become, Canadian citizens.

The employer should include any of these citizenship requirements in the job description to avoid any misunderstandings by applicants.

Plan and implement a Special Program

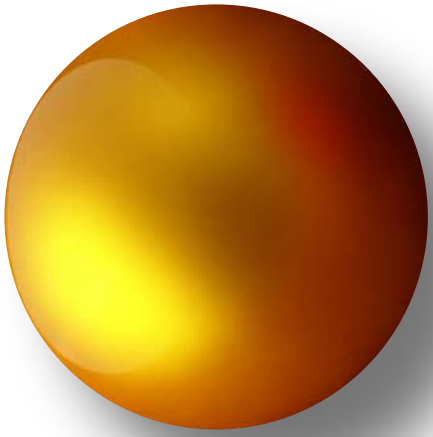
Section 14 of the *Code* permits special programs in employment that would otherwise infringe the *Code*. Special programs help people who experience discrimination, economic hardship or disadvantage to achieve equality. Special programs counter the effects of discrimination through measures that create jobs, provide specialized services or other opportunities. To be a "special program" under the *Code*, a program must satisfy one of the following goals:

- relieve hardship or economic disadvantage
- help disadvantaged persons or groups achieve equal opportunity
- contribute to eliminating the infringement of rights protected under the Code.

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 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.

Surrogate Mothers



Source: Health Canada
http://www.hc-sc.gc.ca/hl-vs/reprod/index-eng.php
Scope: National
Date: January 2013

Assisted Human Reproduction Act

Running an ad for a couple looking to find a surrogate mother, it's not illegal to be a surrogate but it is illegal to pay someone other than their expenses, and 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

(1) 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.

Sale of Firearms

Source: Bill C-19, The Firearms Act
Scope: National
http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?billId=5188309&Mode=1&Language=E
Royal Assent 2012 – April 5
http://www.rcmp-grc.gc.ca/cfp-pcaf/fs-fd/sell-vendre-eng.htm
Last Updated: January 2013

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 condition on a gun store's business licence.

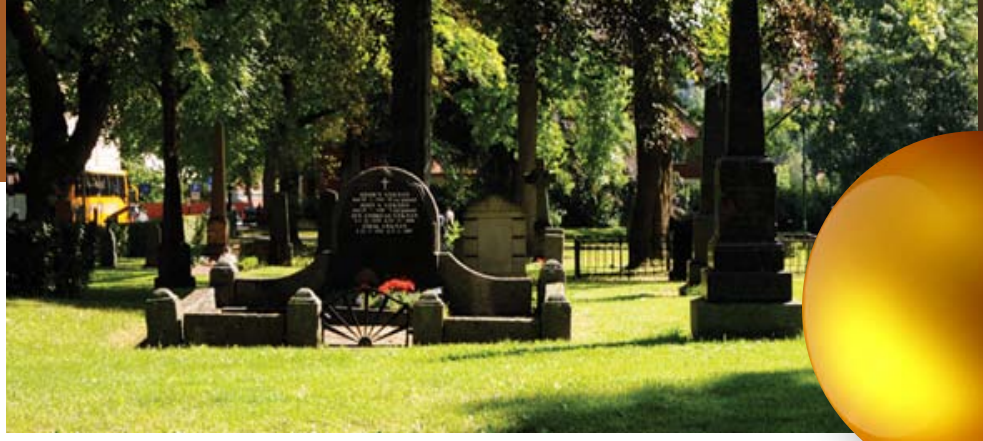
Businesses and/or individuals who are properly licensed to own a firearm can advertise their sale. Ads can list such things as the make and model of a firearm, calibre, ammunition, and price.

Sale of Cemetery Plots

Source: Funeral, Burial and Cremation Services Act 2002
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_02f33_e.htm
Scope: Ontario
Last Updated: January 2013

This Act came into effect in July 2012, and has replaced the former Cemeteries Act.

Info:
http://ofsa.org/FBCSA_2002_388880.html



Who can sell?
Previously only those licensed could sell a cemetery plot. Now any rights holder can sell – as long as they comply with the bylaws and regulations of the associated cemetery. Individuals are now advertising this. There isn't anything in the current regulations about how they can advertise.

DISCLOSURE ON RESALE OR TRANSFER OF INTERMENT OR SCATTERING RIGHTS

Disclosure on resale of rights
115. (1) For the purposes of clause 47 (2) (a) of the Act, an interment rights holder or scattering rights holder who sells the rights shall provide the following information to the third party purchaser upon selling the rights:

1. The interment or scattering rights certificate endorsed in accordance with subsection (2) by the rights holder selling the rights and by the cemetery operator.
2. A copy of the current cemetery by-laws.
3. In the case of the sale of interment rights, a written statement of the number of lots that have been used in the plot to which the rights relate and the number of lots that remain available.
4. In the case of the sale of scattering rights, a written statement of the number of scatterings that have occurred on the scattering grounds to which the rights relate and of the number of scatterings that remain available.
5. Any other documentation in the rights holder's possession relating to the rights.

(2) The endorsement on the certificate provided to a third party purchaser under paragraph 1 of subsection (1) shall include,
(a) a statement, signed by the rights holder selling the rights, acknowledging the sale to the third party purchaser;
(b) the signature of the cemetery operator confirming that the person selling the rights is shown as the rights holder on the records of the cemetery;
(c) the date on which the rights were sold;
(d) the name and address of the third party purchaser; and
(e) a statement of any money owing to the operator in respect of the rights.

(3) After an interment rights holder or scattering rights holder sells the rights to a third party purchaser but before the purchaser exercises those rights, the purchaser shall provide the cemetery operator with, 69
(a) the endorsed certificate mentioned in subsection (1); and
(b) all other information that the cemetery operator specifies and that is necessary in order to issue a new certificate in relation to the rights.

(4) Upon request, a cemetery operator shall provide additional copies of the cemetery bylaws to a third party purchaser, any other person who has an interest in the rights that were subject to the resale or a representative of such a person.

(5) A cemetery operator who provides copies of the by-laws may charge the person who is provided with the copies a fee to recuperate the cost of providing the copies.

Same
(4) An interment rights holder or a scattering rights holder who resells rights under this section shall not sell the rights for an amount that is greater than the price of those rights as indicated on the cemetery's price list. 2002, c. 33, s. 47 (4).

If no resale permitted

(5) Subject to subsections (9) and (10), if the by-laws of a cemetery prohibit an interment rights holder or a scattering rights holder to sell the interment rights or scattering rights to a third party, then, in addition to any rights of cancellation that may exist under section 41 or 42, the rights holder may, at any time, cancel the contract under which the rights were purchased by giving the cemetery operator written notice of the cancellation and require the operator to repurchase the interment rights or the scattering rights, as the case may be. 2002, c. 33, s. 47 (5).

The following information relates to licensed operators

False advertising

27. No licensee shall make a false, misleading or deceptive statement in any advertisement, circular, pamphlet or material published or distributed by any means relating to the sale or provision of any licensed supplies or services. 2002, c. 33, s. 27.

Order of registrar

28. (1) If the registrar believes on reasonable grounds that a licensee is making a false, misleading or deceptive statement in any advertisement, circular, pamphlet, brochure, price list, contract, letterhead or similar material published by any means, the registrar may,

(a) order the cessation of the use of such material;

(b) order the licensee to retract the statement or publish a correction of equal prominence to the original publication; or

(c) order both a cessation described in clause (a) and a retraction or correction described in clause (b). 2002, c. 33, s. 28 (1); 2006, c. 34, Sched. D, s. 19 (1).

Promotional material, etc.

119. (1) Every operator shall ensure that the following information appears in any sign or written advertisement, brochure, price list, contract, letterhead, pamphlet, circular, or other written material, other than business cards, used by the operator to promote the sale of licensed supplies and services:

1. The operator's name.
2. The operator's business name, if different from the operator's name.
3. The name of any person who directly or indirectly controls the operator's business and who directly or indirectly controls another business that sells licensed supplies or services and that has a business premises within 100 kilometres of the operator's business location, except if the business is a cemetery owned by a municipality or a religious organization. O. Reg. 30/11, s. 119 (1).

(6) When advertising a price, an operator shall include an explanation of all of the conditions of sale that relate to the advertised price and a full description of the supplies and services that are included in the advertised price. O. Reg. 30/11, s. 119 (6).

Identity Theft

Source:
Scope: National
Last updated: January 2013

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, musical instruments. Always verify the contact information through an address and telephone number, even if the credit card approval is initially given. Verification can be as simple as calling the phone number provided; Google 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 continuing this 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. The scammers then 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.

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: January 2013

This is a great site to visit 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.

You can also visit www.phonebusters.com which is the Canadian Anti-Fraud Centre with the RCMP. This site will keep you updated on the latest scams.

Also see Consumer Information – by province – at http://www.consumerinformation.ca/eic/site/032.nsf/eng/h_00395.html