

SPONSORSHIP COUNTRY QUESTIONS: CANADA

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Canada-specific information concerning the key legal issues that need to be considered when entering into a sponsorship arrangement.

This Q&A provides country-specific commentary on *Sponsorship: international overview*, and forms part of the *Sales and Marketing International Transaction Guide*.

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RIGHTS OF THE SPONSOR

1. To what extent will a representative appointed by the sponsor to an event's organising committee be liable to a third party who has a valid claim for compensation against the committee?

It will depend on the nature of the organising committee and the role the representative holds within it. If the representative is a director of the organising committee, they may have personal liability to third parties.

As a starting point, directors of companies and non-profit organisations in Canada owe duties to:

- The organisation as a whole.
- The organisation's members, participants, clients, staff and volunteers.
- The directors.
- Anyone else who may be affected by the decisions of the board and the activities of the organisation, including the general public.

A director who fails to fulfill their duties may be personally liable in certain situations, including:

- The organisation's failure to pay employee wages.
- The organisation's participation in illegal activities.
- The directors' participation in conduct that was likely to constitute copyright infringement.

INTELLECTUAL PROPERTY RIGHTS

2. What action lies for using an individual's name or image without consent?

There are a number of potential actions for using an individual's name or image without consent. For example, there may be a cause of action under privacy or tort law and, if the individual is well known, there may be an action for breach of personality rights.

In addition, the individual may have rights under trade mark law if the name or image has been registered as a trade mark or has become well known in Canada.

3. Does an intellectual property right or any other proprietary right exist in an event?

In Canada, there is no copyright in an event or sports game. However, there is copyright in the television production of the event. There could also be trade mark rights in the names, logos, slogans and other marks used in association with the event.

AMBUSH MARKETING

4. What remedies does national law provide against ambush marketing?

Canadian trade marks law provides remedies for various activities that constitute ambush marketing, for example:

- Passing off a party's products or services for those of another.



- Infringing a trade mark.
- Depreciating the goodwill in a trade mark.

Canadian law also provides special protection for Olympic and Paralympic Marks. The Olympic and Paralympic Marks Act specifically prohibits a person from directing public attention to their business, goods or services in a manner that is likely to mislead the public into believing that the business, goods or services are connected to or endorsed by Olympic organising committees or associations.

Remedies under trade mark law include:

- Injunctions.
- Destruction of infringing products.
- Prohibition of imports.
- Damages.
- Accounting of profits.

Depending on the nature of the activity, there may also be criminal remedies.

Federal competition law and provincial consumer protection laws also prohibit misleading and deceptive advertising, and impose additional remedies including fines and (in extreme cases) imprisonment.

REGULATORY ISSUES

5. How does national law regulate sponsorship?

There is no federal "sponsorship" legislation, but various federal statutes regulate sponsorship in Canada, for example:

- The Competition Act, which prohibits misleading advertising or deceptive marketing practices. These practices can carry significant criminal or civil consequences under the Act. The Competition Act's provisions apply to any person promoting, either directly or indirectly, the supply or use of a product or service or any business interest, by any means, including printed or broadcast advertisements, internet advertisements, oral representations, and illustrations.
- The federal Tobacco Act, which specifically deals with sponsorship by tobacco companies. It prohibits the display of a tobacco product-related brand element or the name of a tobacco manufacturer in a promotion used in the sponsorship of a person, entity, event, activity or permanent facility.

In addition to federal legislation, the provinces have consumer protection legislation dealing with unfair practices. Under most provincial legislation advertisers cannot make false, misleading or deceptive representations.

6. What obligations or standards do national codes of practice or legislation impose upon television and radio sponsorship? Consider, in particular:

- Restrictions on who can be a sponsor.
- Restrictions on what can be sponsored.
- Restrictions on the content of sponsorship.
- Restrictions on references to sponsors.
- Restrictions on advertising prominence.

There are a number of regulations which apply to radio and television sponsorship, including:

- The Radio Regulations, which contain restrictions on the advertising of alcoholic beverages and prohibit broadcasting advertisements relating to devices regulated by the Food and Drugs Act, unless the script of the commercial message or endorsement has been approved by the Minister of Health.
- The Television Broadcasting Regulations, which also limit the advertising of alcoholic beverages, and require that the advertisement comply with provincial legislation and the Code for Broadcast Advertising of Alcoholic Beverages.

False or misleading advertising. Canadian provincial consumer protection and business practices legislation also prohibits false or misleading advertising. Like Canada's Competition Act, this legislation applies to advertising in a broad range of media, including print, television broadcast, and the internet. The "deceptive" or "unfair" acts or practices include making representations about price advantages that are not true, or making any representations that goods or services:

- Have ingredients, benefits or qualities that they do not have.
- Are of a particular standard, quality, grade, style or model if they are not.
- Are sponsored.

Industry codes of practice. There are two main industry codes of practice in Canada:

- The ASC Code, aimed at ensuring that advertisements maintain standards of honesty, truth, accuracy, fairness and propriety.
- The Canadian Marketing Association (CMA) Code, which provides guidance to advertisers regarding advertising best practices.

7. How does national law control product placement and editorial sponsorship?

Product placements are not specifically regulated in Canada, but sponsors must still comply with other marketing related laws, such as ensuring the product placement is not false or misleading, and complying with specific product advertising requirements (for example, advertising alcohol or tobacco), and complying with rules about advertising to children.

On the regulatory side, the Canadian Code of Advertising Standards (published by the CMA) states that "no advertisement shall be presented in a format or style that conceals its commercial intent". The CMA's Code of Ethics specifically states that "product placement within entertainment programming is acceptable", but it must still comply with the other rules mentioned above.

8. What procedures exist for complaining against sponsorship? What sanctions can be imposed for infringements of sponsorship codes or laws?

Complaints can be made under any of the consumer protection and competition laws described above, and also under the industry codes (see [Question 6](#)).

Canadian Code of Advertising Standards. Complaints under the code are directed to an independent volunteer body (the Standards Council) for review. If the Council finds that an advertisement contravenes the Code, they will ask the advertising member of the association to remove or amend it.

CMA's Code of Ethics. The code applies to all members of the CMA. If a member contravenes the Code of Ethics, the issue is subject to an internal procedure and can ultimately be referred to the CMA Board of Directors, which can choose to expel the organisation and make a broad public announcement about the expulsion.

Federal Competition Act. By contrast, powers and remedies under the federal Competition Act are much stronger. The Commissioner of Competition has broad powers of investigation, and can gather evidence, compel testimony and execute formal search and seizure actions. If the Competition Tribunal or a Court determines that a person has engaged in deceptive marketing practices, the person may be ordered to:

- Cease those activities.
- Pay a fine to the complainant.
- Pay a penalty of up to CAD\$10 million for a first offence.

There are also potential criminal remedies, including fines and imprisonment.

COMPETITION LAW

9. How does national competition law affect the terms of a sponsorship agreement, for example, the grant of exclusivity?

Federal competition law regulates sponsorship by prohibiting misleading advertisements and deceptive practices (see [Questions 5](#) and [8](#)).

Federal competition law may also prohibit certain types of exclusivity, particularly when it has the following characteristics:

- It is maintained by a major supplier.
- It constitutes a practice.
- It discourages another firm's entry into, or expansion in, the market.
- It is likely to substantially lessen competition.

SPONSORING A CHARITY

10. How does national law regulate the sponsorship of a charity?

The Canadian Income Tax Act (ITA) is the main source of federal regulation regarding the sponsorship of charities. The ITA does not contain a formal definition of "sponsorship". However, according to the Canada Revenue Agency (which collects and regulates income taxes in Canada), a sponsorship takes place when a business makes a donation to a charity in an attempt to promote its brand, product or services.

Generally, sponsorship funds are not considered to be gifts or donations because the business is receiving advertising or some other form of promotion in return. Accordingly, charities cannot issue charitable donation receipts for these sponsorship funds. However, charities can publically acknowledge these donations and provide other special recognition for these donations.

11. What tax treatment does national law give the payment or receipt of sponsorship funds to or by a charity?

The tax treatment depends on whether the payment is considered to be a "sponsorship" or a "gift".

Sponsorship. If the payment is a sponsorship, the business can deduct 100% of the payment within the fiscal year in which the payment was made, provided it fulfils the following six requirements set out in the Income Tax Act:

- The expense is an income and not a capital expenditure.
- The expense is a reasonable amount.
- The expense was incurred as an earning income.
- The expense is not of a personal nature.
- The Act did not explicitly prohibit the expense.
- The expense did not occur with an intention of "abusive tax avoidance".

Gift. By contrast, if the payment is a gift to a registered Canadian charity, the business can deduct 100% of the gift up to five years after the gift was given to the charity. A charity can only issue an official donation receipt for income tax purposes for cash or property donations that constitute gifts to the charity. In most cases, the eligible amount is the fair market value of the donated property less the value of any advantage received by the donor.

SPONSORSHIP OF THE ARTS

12. How does national law regulate sponsorship of the arts? Are there any incentive schemes to promote sponsorship of the arts?

Canadian law does not specifically regulate sponsorship of the arts. However, the Income Tax Act and the Cultural Property Export and Import Act provide tax incentives to individuals who want to sell or donate cultural property to Canadian institutions or public authorities.

TAX

13. How does national law treat the payment or receipt of sponsorship funds? Are sponsorship expenses incurred by a sponsor tax deductible?

Payment of sponsorship funds is tax deductible if the payment fulfils the six requirements set out in [Question 71](#). The deduction must be made within the fiscal year where the funds were paid unless the payment constitutes a "gift" to a registered Canadian charity, in which case the deduction can be made within five years.

Receipt of sponsorship funds by a **registered** Canadian charity is not taxable. However, the charity must submit a report listing its income from sponsors and its expenditures showing how the money was spent. Charities in Canada come into existence with specific purposes, and it is important that the charities use the resources to fulfil their charitable purposes.

Receipt of sponsorship funds by a **non-registered** charity is treated differently depending on whether the recipient is a non-taxable taxpayer or a taxable taxpayer. The former type of taxpayer is typically a non-profit organisation that does not have full charitable status. Both types of organisations must fully report the sponsorship income, but the tax treatment for each is different.



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