



Promotional Games Fact Sheet

Introduction

This Fact Sheet is intended to assist UBC staff and faculty members to understand their obligations under the various Canadian laws when conducting a promotional game, contest, or sweepstakes (collectively, referred to herein as any “**promotional game**”) directed at entrants residing in Canada, who are the age of majority in their residing Province or Territory, excluding the Province of Quebec. **It is not intended to be a substitute for legal advice. If you have specific questions with respect to this Fact Sheet, wish to conduct a promotional game open to entrants residing outside of Canada, or want to ensure your promotional game is legally compliant; you must contact the Office of the University Counsel.**

The Main Categories of Promotional Games

Three of the most common and legally accepted promotional games are:

1. **Sweepstakes:** where winners are determined by **chance** (e.g., random draw, raffle, and seeded prizes (i.e., under the cap or roll up the tab promotions);
2. **Contests:** where winners are determined based on **skill** (e.g., essay writing contest, artistic, or academic merit); and
3. **Giveaways:** where winners are determined based on **timing** (e.g., the first 100 visitors receive a gift or UBC merchandise).

The Primary Areas of Law

Promotional guidelines come from both the *Criminal Code* and the *Competition Act* of Canada, contract law, and potentially the domestic laws of foreign jurisdictions, as further set forth in this Fact Sheet.

1. **Canada’s Criminal Code** makes it a crime to hold a promotional game that has all of the following three elements (described more fully herein below):
 - a. **Chance**
 - b. **Consideration**
 - c. **Prize**

If you want to hold a legal promotional game, you must eliminate one of the above three elements, or it could be deemed an unauthorized lottery, whereby the entrant pays for the chance to win a prize (e.g., the dream home lottery). **Lotteries are highly regulated and restricted and if an unauthorized lottery is conducted, it may subject UBC and you to criminal and civil penalties, as set forth herein.**

As eliminating the prize usually defeats the purpose of the promotion, the focus of elimination is usually on chance or consideration.

Chance can be eliminated with a **contest of pure skill** or the addition of a **skill testing question**.

- i. **Contests of “pure skill”** need to be based on true skill, **not something any person entering your contest would be able to do**. Furthermore, you need to have clear rules for judging the relative merits of the entries which need to be expressly communicated to the entrants in the promotional game’s official rules.
- ii. **Skill testing questions** are often used to introduce an element of skill into the promotional game, and are included in the UBC official rules template for promotional games (“**UBC Official Rules Template**”), as further described below. Such skill testing question should contain at least four parts and include addition, subtraction, multiplication and division.

Consideration can be eliminated with a “**no purchase necessary**” option for entry. At law, consideration is any obligation on the part of an entrant before entering into the promotional game. Examples of consideration include a cash entry fee or a purchase requirement; or the request for a substantial undertaking on the part of the participant; or disclosure of personal information from the entrant beyond that which is required to administer the promotional game. Therefore, entrants should be given an entry option which does not require providing additional personal information or paying a fee, and limit entry participation tasks to 5-10 minutes.

2. **Canada’s Competition Act** obligates the disclosure of the following information to potential entrants as part of the promotion game’s official rules:
 - a. **the number and approximate value** of the prizes; and
 - b. **the regional distribution** of your prizes, if any (e.g., if you are selecting one winner from Alberta and five from Ontario); and
 - c. **the odds of winning** (in a sweepstakes this would depend on the number of entries).
3. **Contract Law** makes the promotional game’s official rules a binding legal contract between UBC and the entrant. You are required to follow the official rules precisely when awarding prizes or disqualifying entrants running afoul of the rules. It is extremely important that you review the UBC Official Rules Template to make sure they match precisely with how you are planning to administer your promotional game. If you do not follow the rules, a disgruntled entrant can sue UBC and you, which can lead to unnecessary legal liability and negative public relations.
4. **Domestic laws of Foreign Countries** can apply when game promotions are targeted specifically to certain states or countries outside of Canada (e.g., the laws can be quite different from state to state in the United States with regards to the distinctions and allowances for certain game promotions). Please contact the Office of the University Counsel should you wish to run a promotion outside of Canada.

Exclude the Province of Quebec

Quebec has its own rules for promotions, including that promoters have to put up a prize bond. If a promotion is planning to be held in Quebec, you will need to have approval from the Office of the University Counsel, which may involve assessing the proposed promotion in light of the added costs and risks associated.

The Use of Social Media Platforms

If you are using an element of social media, you need to review the current rules for each platform on which you wish to run your promotional game. These terms change from time to time and can be typically found on the platform “Terms of Use” or FAQ sections. Facebook and Twitter each have their own differing rules for how promotions can be run on their platforms, for example:

1. **Facebook:** Facebook does not allow promotional games to be run through Facebook’s infrastructure. It is contrary to Facebook’s terms of use to encourage entrants to enter a promotion by “liking a page” or notifying winners by Facebook’s messaging or wall posts. Facebook requires that promotions be administered through a third party application on your page, and there are license fees associated with those applications. At the time of writing this Fact Sheet, UBC does not have an arrangement with an app developer for promotions on Facebook. Facebook’s rules regarding promotions can be found at this link: http://www.facebook.com/page_guidelines.php.
2. **Twitter:** Twitter’s guidelines for promotions run through Twitter’s infrastructure do not require a third party application, and can be run without incurring licensing fees. Twitter’s primary rule for promotions is to not clutter the stream with the same tweet over and over, and it will filter your tweet out of the search results if you do not follow the guidelines. Therefore, retweet promotions on Twitter need to have a limit on the number of entries per day. Specific sample language for Twitter retweet promotions is available from the Office of the University Counsel. Twitter’s promotion guidelines can be found at this link: <https://help.twitter.com/en/rules-and-policies/twitter-contest-rules>

The Use of the UBC Official Rules Template Package

The best way to begin your promotion is by reviewing the UBC Official Rules Template package available under the “[The Links to the UBC Official Rules Template Package](#)” section below. The package contains templates for the Official Rules, the Skill Testing Question, and the Declaration and Release.

1. **Official Contest Rules:** These rules describe and address important legal considerations contained in this Fact Sheet such as: (i) administering the skill testing question, (ii) right of UBC to publicize name and image of winner, (iii) confirming that the selected winner meets all of eligibility requirements, and (iv) obtaining promises from the winner to not sue UBC if something goes wrong with the prize after it is awarded to the winner (i.e. a Declaration and Release). The promotional game administrator at UBC will have to review these Official Contest Rules to ensure they comply with the specifics of their intended promotional game.
2. **Prize Value and Distribution Confirmation:** The promotional game administrator at UBC will have to review the Official Contest Rules to ensure that the number of prizes, the value of the prizes, any regional distribution of the prizes, and chances of winning are properly identified in the Official Contest Rules.
3. **Declaration and Release:** The promotional game administrator will ensure that selected entrants are required to complete a declaration confirming that they are who they say they are, they accept the prize “as awarded”, they consent to publication of name and image, they meet all eligibility

requirements and that they will not sue UBC in connection with the prize. If your prize includes an activity, such as travel, ensure you contact the Office of the University Counsel for specific language to include in any declaration and release for travel prizes. You must complete the dates and prize description in this form before sending it to the selected entrant.

The Links to the UBC Official Rules Template Package

Once the promotional game administrator has reviewed the terms of this Fact Sheet, identified and inserted, where applicable, all the information required to be included into the UBC Official Rules Template Package, then the administrator should arrange to have the final draft form of the UBC Official Rules Template Package vetted by the Office of the University Counsel.

- Exhibit A** [Official Contest Rules](#)
- Exhibit B** [Skill Testing Question](#)
- Exhibit C** [Declaration and Release](#)