



# CLIENT ALERT

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## **QUEBEC EXEMPTIONS TO PUBLICITY CONTEST RULES: SPONSORS WELCOME TO QUEBEC**

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### **INTRODUCTION**

Quebec recently made changes to its publicity contests rules. The rules, which require publicity contests to adhere to stringent regulatory requirements in order to operate in Quebec, now exempt international publicity contests from some of those constraints due to the passage of Bill 82. In addition to this legislative change, another exemption from the publicity contest requirements has always existed but is rarely considered, namely that Quebec's legislation only applies to contests that promote the commercial interests of the sponsor or a related entity.

When contest promoters are deciding whether to include Quebec residents as eligible entrants, they need to consider (1) whether the contest is an "international" contest and (2) whether it promotes a commercial interest. If these exemptions apply, Quebec residents can be included without the contest needing to satisfy all of the requirements set out in the Quebec legislation (in the case of international contests) or without needing to abide by the legislation at all (in the case of contests that do not promote a commercial interest).

### **ANALYSIS**

#### **1. Changes to Quebec legislation exempting international publicity contests**

Prior to Bill 82, all publicity contests open to Quebec participants were subject to registration with the Régie des alcools, des courses et de jeux (the "Régie").<sup>1</sup> The *Act respecting lotteries, publicity contests, and amusement machines* (the "Act") is designed to protect Quebec residents and ensure an even playing field.<sup>2</sup> The Act sets out robust steps that a company sponsoring an event needs to follow for the contest to be open to Quebec residents. Previously, to run international publicity contests open to Quebec residents, the sponsor was required to register the contest rules and all advertisements with the Régie and pay fees based on a percentage of the value of the contest prizes. In many circumstances, security was required to be posted in a Quebec financial institution to guarantee the performance of the contest, and the promoter had to complete and submit certain post-contest filings with the Régie. Rather than take on the task of completing these steps, many companies responded by simply declaring Quebec residents ineligible to participate in their contests.

Effective June 2021, Bill 82 changed these rules concerning international publicity contests.<sup>3</sup> The amendments eliminated registration and fee requirements for international publicity contests. Contests are considered "international" if they are open to participants outside of

Canada as well as Quebec participants. Bill 82 struck out the portion of the Act that provided that "0.5% of the value of a prize offered to any other group of contestants including contestants from Québec."<sup>4</sup> Bill 82 also amended the Act to remove the requirement to post security for international contests. However, if a publicity contest is open to other Canadian provinces, including Quebec, but not other countries, then it is not considered international.

Bill 82 did not lift all of the requirements that contest promoters must satisfy in respect to international contests. Such promoters must still (1) register the contest with the Régie, (2) submit the rules and advertising copy for the contest to the Régie at least ten days before it begins, (3) translate their rules into French, (4) file reports with the Régie after the contest is over, (5) retain materials relating to the contest, and (5) include a notice advising Quebec residents that they have the right to submit litigation regarding the contest to the Régie for a ruling.

Publicity contests are also not considered international in a few other situations. First, if participation can only be attained in Quebec, even if it could be open to people elsewhere in Canada. This situation could occur if, for example, participants must be present at an event located in Quebec to qualify to enter. Another situation is when the key commercial interests of the person for whom the contest is carried on, are in Quebec. The Régie currently holds that a contest is not international if its sponsor is only located in Quebec or if its primary operations are in Quebec – even if the contest is also open to international participants. In other words, to qualify for the international contest exemption, the contest sponsor must have operations in places other than Quebec and must not conduct the majority of its operations in Quebec.

#### **2. Only promotions that are a "publicity contest" are within Quebec's jurisdiction**

The Act only applies to a contest that is a "publicity contest," as that phrase is defined in the Act.<sup>5</sup> This means that it only applies to "a contest, a lottery scheme, a game, a plan or an operation which results in the awarding of a prize" where that contest, et. al., is "carried on for the object of promoting the commercial interests of the person for whom it is carried on."<sup>6</sup>

Consequently, only contests that are carried on to promote the commercial interests of the sponsor or any related entity are within the Régie's jurisdiction. For example, a promotion that only promotes non-commercial interests of the public is not subject to the Act. Likewise, if a publicity contest is of a nature that rewards individuals for

<sup>1</sup> *Rules respecting publicity contests, under an Act respecting lotteries, publicity contests and amusement machines*, chapter L-6, r.6.

<sup>2</sup> *Act respecting lotteries, publicity contests and amusement machines*, 1990, c. 46, s. 18.

<sup>3</sup> Bill 82, *An Act respecting mainly the implementation of certain provisions of the Budget Speech of March 2020*.

<sup>4</sup> *Supra* note 2 at s. 58(c).

<sup>5</sup> *Supra* note 2 at s. 1(b).

<sup>6</sup> *Ibid.*

doing something and does not result in the promotion of commercial interests, it is not within the Régie's jurisdiction. A contest carried on to promote the interests of a political party, or to promote public health, would accordingly not be a "publicity contest." Such a contest could be made available to entrants from Quebec without the need to comply with any of the requirements of the Act and the Rules enacted under the Act. This differs from the "international contest" exemption, which only relieves the contest promoter of certain specific requirements.

If a contest promoter is of the view that a proposed contest only promotes non-commercial interests, the rules and advertising of the contest can be submitted to the Régie for a ruling of whether or not the contest is in fact governed by the Act.

## CONCLUSION

Quebec's recent change to its legislation makes it easier for some contests to be open to Quebec residents. This change was addressed in Bill 82, which exempted qualifying international publicity contests from some of the regulatory constraints previously required. Along with this legislative change, certain contests may fall completely outside the parameters of the Quebec legislation concerning publicity contests where they promote only non-commercial interests. Contest promoters should be conscious of these two limitations on the legislation affecting publicity contests when deciding whether to open their contests to Quebec participants.

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