

# Alcohol, Health Warnings in Yukon and Canadian Law

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## Alcohol Industry Claim: Yukon had no constitutional authority to place health warnings on the alcohol products it sells.

### Canadian Law:

- The *Yukon Act* granted the Territory constitutional powers that were for the most part equal to those of the provinces.
- Thus, Yukon could enact stringent warning label legislation or undertake a warning label project under its constitutional authority over property and civil rights, public health, and matters of a local or private nature.
- Moreover, the *Yukon Act* gave the Territory **express** constitutional authority over “intoxicants.”
- It is ironic that the industry made this claim, given that Yukon has broader express constitutional authority regarding alcohol than Canada’s ten provinces.
- The alcohol industry’s claim has no legal merit.

## **Alcohol Industry Claim: The health warnings violated their freedom of expression under s. 2(b) of the *Canadian Charter Rights and Freedoms*.**

### Canadian Law:

- Yukon attached to alcohol products that it had purchased from the industry a cancer warning from the Chief Medical Officer of Health. This is not a case of compelled or forced speech. In this situation, there is no apparent violation of the manufacturers' freedom of expression.
- Had Yukon required manufacturers to attach health warnings and graphic images to their products, the manufacturers' freedom of expression would have been infringed.
- However, the rights and freedoms in the *Charter* are not absolute, but rather may be limited pursuant to s. 1, when doing so is demonstrably justifiable in the circumstances.
- Thus, the alcohol manufacturers would have no *Charter* remedy if Yukon could establish that the mandated health warnings constituted a reasonable limit "prescribed by law as can be demonstrably justified in a free and democratic society."

- While commercial speech is protected under s. 2(b), it is viewed as less important than political or other types of expression.
- For example, the SCC unanimously held that a federal ban on almost all tobacco advertising and sponsorship, and a requirement for prominent health warnings and rotating, full colour, graphic images covering at least 50% of the main display surfaces constituted reasonable and justifiable limits on the tobacco companies' freedom of expression.

## Alcohol Industry Claim: Yukon can be held civilly liable in defamation for claiming that alcohol use can cause cancer.

### Canadian Law:

- Defamation protects the reputation of individuals, corporations and businesses, **not** products. It is injurious falsehood (slander of goods) that protects products.
- To establish injurious falsehood, the industry must prove on the balance of probability that:
  - the statement is factually untrue, namely that alcohol use cannot cause cancer; and
  - the statement was made maliciously, namely knowing it to be false or for some improper purpose.
- The claim would clearly fail on both grounds.
- The industry's belief that alcohol is not carcinogenic or that there are more effective ways of informing the public is irrelevant.

## Conclusions and Implications

- The industry has unintentionally raised a critical issue for the territories or provinces that have public sector alcohol outlets.
- All Canadian manufacturers and **suppliers** have a duty to inform consumers of the risks inherent in the foreseeable use and misuse of their products.
- They must inform consumers of risks of which they know or ought to know, and must keep abreast of the research in their field.
- The courts have established that the standard of disclosure:
  - is stringent for products intended for human consumption;
  - increases with the probability and severity of the risks;
  - increases for products that are mass-marketed to potentially vulnerable consumers; and
  - increases for any risks that are not generally known to the public.
- As an alcohol supplier, Yukon will be expected to meet a rigorous standard of disclosure, given the probability and severity of the cancer and other risks of alcohol use.

- Ironically, removing the cancer warnings from their alcohol products exposed Yukon to a far greater risk of being held civilly liable than attaching them.
- The successful \$15 billion Québec class action suit against three tobacco companies should encourage all alcohol manufacturers and suppliers to carefully re-assess their potential liability.
- It is only a matter of time before similar suits are brought against alcohol manufacturers and the provincial and territorial liquor authorities that sell their products.