

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:

f The *Yukon Act* granted the Territory constitutional powers that were for the most part equal to those of the provinces

f 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

f Moreover, the *Yukon Act* gave the Territory express constitutional authority over “intoxicants”

f It is ironic that the industry made this claim, given that Yukon has broader express constitutional authority regarding alcohol than Canada’s ten provinces

f The alcohol industry’s claim has no legal merit.



While commercial speech is protected under 2(b), it is viewed as less important than political or other

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

Canadian Law:

f Defamation protects the reputation of individuals, corporations and businesses, not products. It is injurious falsehood (slander of goods) that protects products.

f To establish injurious falsehood, the industry must prove on the balance of probability that

$\frac{3}{4}$ the statement is factually untrue, namely that alcohol use cannot cause cancer, and

$\frac{3}{4}$ the statement was made maliciously, namely knowing it to be false or with intent to defame.

Conclusions and Implications

*f*The industry has unintentionally raised a critical issue for the territories or provinces that have public sector alcohol outlets

*f*All Canadian manufacturers and suppliers have a duty to inform consumers of the risks inherent in the foreseeable use and misuse of their products

*f*They must inform consumers of risks of which they know or ought to know, and must keep abreast of the research in their field.

*f*The courts have established that the standard of disclosure

$\frac{3}{4}$ is stringent for products intended for human consumption;

$\frac{3}{4}$ increases with the probability and severity of the risks;

$\frac{3}{4}$ increases for products that are mass marketed to potential consumers.



Ironically, removing the cancer warnings from their alcohol products exposed Yukon to a far greater risk of being held civilly liable than attaching them

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