

New legal landscape affecting public relations

Now, more than ever, a good relationship with in-house or outside legal counsel is imperative for every public relations (PR) practitioner.

Three new or amended federal laws, and a relatively new development on the litigation front in Ontario, have all impacted greatly on the practice of public relations in Canada.

The amended federal Competition Act makes it necessary to ensure all publicized product or service claims have legitimate back up. For example, claims such as “best”, “newest” or “fastest” must be carefully substantiated.

“The landscape is changing and even if a marketing claim does not result in criminal charges pursuant to the Competition Act, it may now and probably will be the subject matter of private complaints that clearly would increase the possibility for a great deal of new ‘enforcement’ activity under the Competition Act,” says business lawyer Richard D. Harlow. “The difference is that the enforcement may be of a private civil nature and not of a criminal nature.”

The new federal Copyright Law has also made the use of clippings and broadcast tapes, particularly the electronic versions thereof, tricky. There has always been an issue regarding where clips can be used for ‘internal purposes’ and where they become used ‘for external/sales purposes’ which can get PR, both in-house and agency, in big trouble.

“Media rights holders have been very clear - no internal redistribution without a license and definitively no external distribution,” says John Weinseis, President, Bowdens Media Monitoring Limited. “This is now reflected in many of Bowdens copyright licenses. It’s going to get more complicated as rights holders become more aggressive in policing and enforcing their rights.”

The Federal Privacy Act, fully implemented in 2004, could impact the use of news media lists. My practice has always been to remove a journalist from my own database when they complain about receiving news releases inappropriately (where they feel they should not have been targeted). I always apologize, remove them immediately and offer to notify the list services such as Bowdens or CCNMatthews. But if a freelance journalist uses a private e-mail to receive information, could that journalist claim that the act of receiving unsolicited news releases is SPAM and therefore violates their rights?

"Our distribution lists are carefully tailored to match the subject interests of each recipient to mitigate any spamming concerns," says Neil Baird, former Vice President of Marketing at CCNMatthews. "But certainly, if anyone complains, they are immediately removed from that list and asked if there is any other types of news they'd like to receive."

And finally there is the removal of restrictions against using contingency fees in Ontario, one of the last legal jurisdictions in North America to demand that retainers must be paid in litigation suits. The Law Society of Upper Canada in 2002 removed this barrier, and litigation can generally now be conducted on a percentage of winnings basis.

PR contracts with clients now often stipulate that one million dollars in general liability insurance is required – which is harder and harder to get these days without an equal amount in professional liability (or errors and omissions insurance), an expensive necessity. Such coverage can cost several thousand dollars a year - rather difficult for independents or small agencies to accommodate financially.

"Our firm has been receiving an ever increasing number of calls from people requesting professional liability," says Bill Kirkwood of Erb and Erb Insurance. "This is unusual in that these people for the most part have not had this kind of coverage before. We are seeing the trend from both the government as well as private sectors."

With these new developments in the Canadian legal landscape, it is important that legal counsel be involved in the PR process – not just to rubber stamp external communications. Legal counsel should be involved in planning and protocol steps to ensure the PR process does not run afoul of any of the new legislation.

The Canadian Public Relations Society offers its members an affordable group liability insurance program. Go to www.cprs.ca for more information.