

August 30, 2013

Are You Ready? Canada's Anti-Spam Legislation and its Effect on Businesses

By Philip Aubry

You have all received the emails requesting money transfers and/or the emails from a banker claiming you have inherited money from a distant relative or wealthy individual from Nigeria for a nominal fee. As spam or unsolicited commercial messages have become the primary vehicle for the delivery of online threats, Canada is set to implement one of the toughest anti-spam legislation in the world.

An act to amend the *Canadian Radio-television and Telecommunications Commission Act*, the *Competition Act*, the *Personal Information Protection and Electronic Documents Act* and the *Telecommunications Act* ("**Canada's Anti-Spam Legislation**" or "**CASL**"), Bill C-28, received Royal Assent on December 15, 2010. After numerous delays by the Federal Government in bringing the CASL into effect, it is expected the CASL will come into force in the winter or fall of 2014¹ and will have a significant impact on every business in Canada.

1. What is the objective of the new law?

To deter the sending of unsolicited commercial electronic messages, the unauthorized alteration of transmission data, the installation of computer programs without consent, false and misleading electronic representations online (including websites), the unauthorized collection of electronic addresses and the collection of personal information by accessing a computer system.

These unsolicited commercial electronic messages and spyware not only disrupt online commerce and reduce business and consumer confidence in the marketplace but it can impose heavy costs on businesses that are threatened by these operators and users.

In our view, the proposed legislation will provide Canadians with much needed legal protections and the intent is good. However, the current draft regulations will need to be modified as it would severely hamper and alter the way businesses operate in Canada.

2. How do you comply?

The proposed regulations are in a state of flux and have not been finalized. However, it is anticipated that in order to comply when sending an email or a consumer electronic message an express consent shall be required rather than our current regime where an implied consent is sufficient. The express consent will need to be obtained on an "opt-in" basis (implied consent applies only in limited circumstances) and shall be required to send almost all electronic messages for a commercial purpose. A request for consent



PERLEY-ROBERTSON,
HILL & MCDUGALL LLP/s.r.l.

¹ A specific date for coming into force of the CASL will be set in the coming months.

may be obtained orally or in writing and must be sought separately for each act. The request for consent must also include a mechanism that the person whose consent is sought can withdraw their consent.

3. What will the penalties be if a business does not comply?

It is important to comply with CASL early as the penalties could be severe. Some of the penalties include personal liability for directors and officers of the corporation if negligence is shown, criminal charges and vicarious liability for companies that do not comply. In addition, fines imposed could be up to \$10 million per violation for corporations.

4. What can your business do in order to comply early and be ready?

In order to be prepared, each business should start reviewing their current marketing and communication practices as well as evaluate their current consents and unsubscribe methods. Some businesses may want to establish an internal CASL committee in order to prepare and stay educated on the developments of this new legislation. Preparation for the CASL in certain cases depending on the type of business development your business conducts may take weeks or months to implement. Therefore, it is recommended to start getting express consent immediately. In addition, we recommend staying up to date on the latest news, developments and implementation of the CASL.

Philip Aubry is a lawyer in our Corporate Law Group. Philip can be reached at 613.566.2746 or paubry@perlaw.ca. To view his bio, please [click here](#).