

Canada's new anti-spam legislation

Is your business in the habit of sending unsolicited promotional emails or updates? If so, you need to know about Canada's new anti-spam legislation which will become law on July 1, 2014. The legislation is entitled "*An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and 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*", but I will refer to it as the Act or the legislation.

The Act prohibits sending unsolicited commercial electronic messages. Even an email asking for permission to send further informational or promotional emails will be prohibited by the Act. However, commercial emails may be sent with consent. There are two forms of consent: express consent or implied consent.

As always with privacy regimes, express consent is the gold standard for ensuring that a person complies with the requirements of the Act. In order for an express consent to be valid the consent must include information required by the Act such as:

- the purpose for which the consent is being sought;
- the identification and contact number of the person seeking consent;
- that the consent may be withdrawn; and,
- any other information that may be prescribed by regulation.

There will be implied consent to send commercial emails in the following circumstances:

- (a) where there is an existing business relationship, a business will be permitted to provide commercial emails for a period of **two years** from the time the business services were provided;
- (b) where there has been an inquiry from a person, then commercial emails may be sent for a period of **six months** from the inquiry;



- (c) where the recipient has conspicuously published their email address and has not posted a disclaimer that they do not wish to receive unsolicited commercial email messages, and the message is relevant to their business or official capacity, then commercial email messages may be sent; and,
- (d) where the recipient has provided their email contact information without indicating that they did not wish to receive any unsolicited commercial messages, and the message is relevant to their business or official capacity, the commercial email messages may be sent.

There are transitional provisions in the Act which will permit the sending of commercial email messages for a period of three years, where there is an existing business relationship at the time the Act came into effect **and** the relationship included commercial communication by emails.

There are also provisions in the Act controlling the content of commercial emails. Once consent has been established, then the email message must contain:

- the name of the person sending the message;
- the mailing address and either a telephone number, email address or web address of the sender (which must remain valid for a minimum of 60 days); and,
- an unsubscribe mechanism.

There are certain exceptions and exemptions in the Act and regulations but it is clear that the purpose of the legislation is to protect both individuals and businesses from spam e-mail that interferes with business efficiency and personal privacy. Therefore, if your business wishes to engage customers or potential customers electronically, you will have to ensure that your e-mail practices conform to the Act and its accompanying regulations.

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