

FTR Now

Canada's Anti-Spam Legislation to Come into Force on July 1, 2014

Date: January 6, 2014

On December 4, 2013, the Department of Industry published the final version of the *Electronic Commerce Protection Regulations* (the "Industry Canada Regulations") under Canada's Anti-Spam Legislation ("CASL") – the last step in the long process of putting a comprehensive regulatory scheme into place. At the same time, the government announced that much of CASL would come into force on **July 1, 2014**.

In this *FTR Now*, we review the implications of these recent developments for employers and other organizations that may find themselves subject to CASL regulation. A more detailed discussion of CASL can be found in our January 10, 2013 *FTR Now*, "[Preparing for Canada's New Anti-Spam Legislation](#)."

OVERVIEW OF CASL

CASL is a broad piece of legislation that is designed to promote economic activity and the use of electronic commerce by targeting "spam," the installation of spyware and other malicious code, and "pharming" (which involves directing individuals to fraudulent websites).

CASL is of importance to organizations because of its potential impact on legitimate business-related electronic communications through its restrictions on the sending of "commercial electronic messages" or "CEMs" – messages sent by any means of telecommunication that are intended (even in part) to encourage participation in commercial activity.

CASL will impose three primary prohibitions:

- a prohibition on sending, or causing or permitting to be sent, CEMs without the express or implied consent of the recipient and in compliance with prescribed form and content;
- a prohibition on altering transmission data in an electronic message so that it is delivered to an alternate address without express consent, unless the alteration is in accordance with a court order; and
- a prohibition on installing a computer program on another's computer, or causing an electronic message to be sent from such a computer, again without express consent, unless this is done in compliance with a court order.

These broad prohibitions are subject to a number of exceptions and limitations which are detailed

in CASL, the Industry Canada Regulations and the *Electronic Commerce Protection Regulations (CRTC)*, regulations issued by the Canadian Radio-Television and Telecommunications Commission (“CRTC”) under CASL.

THE INDUSTRY CANADA REGULATIONS

In the regulatory scheme under CASL, the Industry Canada Regulations perform several key functions:

- defining the scope of “family relationships” and “personal relationships,” two key exemptions from CEM regulation under CASL;
- creating a series of prescribed exemptions from CEM regulation;
- establishing conditions for the use of a consent obtained on behalf of a person whose identity is unknown;
- prescribing certain computer programs for which CASL deems express consent to be given for their installation; and
- defining the scope of membership in clubs, associations and voluntary organizations for the purpose of the implied consent provisions of CASL.

The final version of the Industry Canada Regulations address some of the criticism leveled at earlier versions. Some of the key exemptions in the final version of the Industry Canada Regulations include:

- a revised business-to-business exemption, which appears to expand the original proposed exemption;
- CEMs sent in order to satisfy legal obligations or to enforce a variety of legal rights; and
- CEMs sent by registered charities where the primary purpose of the CEM is to raise funds for the charity.

ENFORCEMENT AND PENALTIES

CASL will be enforced by the CRTC, which is given broad powers of enforcement. CASL provides for severe penalties for non-compliance, with the maximum penalty per violation set at \$1 million for an individual and \$10 million for a corporation. CASL also creates a private cause of action for individuals alleging a violation of CASL. This will allow an individual to rely on an unsolicited CEM as the foundation for a civil action.

COMING INTO FORCE

As noted at the outset, most of the provisions of CASL, including the provisions relating to CEM regulation, will come into force on **July 1, 2014**. The prohibitions relating to the installation of

computer programs without consent will come into force on **January 15, 2015**. The provisions relating to the new private cause of action will come into force on **July 1, 2017**.

PREPARING FOR CASL

All organizations will want to assess the extent to which they engage in the sending of CEMs as part of their marketing and business strategies, and thus the extent to which they may be exposed to CASL regulation. While CASL is set to come into force on July 1, 2014, the statute provides for a three-year transitional period during which time organizations will have deemed implied consent to send CEMs to any persons with whom they have an existing business or non-business relationship that includes the sending or receiving of CEMs.

For more information about CASL, how it may affect your business and how to prepare for its implementation, please contact [Paul E. Broad](#) or your [regular Hicks Morley lawyer](#).

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