

FTR Now

CASL Update – Coming into Force of Private Right of Action Delayed

Date: June 8, 2017

This is to provide an update on significant developments relating to Canada's Anti-Spam Legislation (CASL) in light of a government decision to delay changes anticipated to come into effect on July 1, 2017 and to review the much-maligned enactment.

Introduction of Private Right of Action Delayed

The federal government issued an Order in Council yesterday postponing the coming into force of a private right of action. The Order in Council simply eliminates the provision of Order in Council P.C. 2013-1323 which would have caused the private right of action to come into force on July 1, 2017. No specific provision is made for a future date on which the private right of action may come into force. At this stage, the postponement of this right is indefinite.

Since its enactment, the legislation has been criticized for its breadth of potential and actual application. The postponement of the private right of action comes on the heels of significant pressure from organizations that have committed considerable resources to compliance with CASL, but nonetheless have concerns about ongoing lack of clarity. Given the postponement of the right of action and statements the government has made about the postponement, the decision represents a move to protect organizations from undue risk and uncertainty while allowing an opportunity for reform, the prospects of which will be uncertain for some time. In the meantime, CASL will remain fully in-force and subject to enforcement by the CRTC.

Transition Period Set to Expire on July 1, 2017

The recent Order in Council does not affect the pending expiration of the CASL transition period. Therefore, on July 1, 2017 organizations may no longer rely on implied consent unless it is deemed to exist in accordance with the provisions of CASL that provide for consent based on relationships that qualify as "existing" based on a timeframe. Organizations may wish to request express consent from individuals in less current, non-qualifying relationships before it is too late.

If you require further information on this new development, please contact [your regular Hicks Morley lawyer](#).

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