



Canada's New Anti-Spam Legislation



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Canada's new anti-spam legislation, the *Electronic Commerce*

Protection Act, known as "CASL", was passed by Parliament on December 15, 2010 and is expected to come into force in 2013. The purpose of the legislation is to stop unsolicited commercial electronic messages (or CEMs), such as emails, from being transmitted without the consent of the recipient of the message.

Fundamentally, CASL sets out to whom CEMs can be sent and how communications with recipients can be undertaken, without being in contravention of the new legislation.

Under CASL, senders of CEMs must request express consent from recipients before a CEM is ever sent. However, charities and other not-for-profits may be exempt from the express consent requirement if they are able to "imply" consent from recipients. CASL permits these organizations to rely on "implied consent" if there is an "existing non-business relationship" within the previous two years, such as with donors and volunteers in the case of charities and with members in the case of other not-for-profits.

Each CEM will be required to contain an unsubscribe mechanism

complying with the statutory and regulatory requirements and the message itself will be required to make prescribed informational disclosures about the sender. For example, senders will be required to set out their mailing address and either a telephone number, email address or web address in the CEM.

CASL is viewed as one of the world's toughest anti-spam laws. Individuals can be fined up to \$1M for contravention of the legislation and businesses, charities and other not-for-profits can be fined up to \$10M.

It is still unknown when exactly CASL will come into force. Since the grace period for implementation may not necessarily be sufficient to effect compliance and given the harshness of the penalties inherent within CASL, charities and other not-for-profit organizations should start reviewing their current practices of sending CEMs as soon as possible and determine what changes will be required to comply with CASL. In particular, they should:

- Identify with whom they have an existing non-business relationship within the previous two years in order to determine if they can imply consent to the receipt of CEMs;
- Contact other potential recipients to request express written consent to send them CEMs;

- Maintain an up-to-date database of donors, volunteers and members which indicates the most recent dates of engagement with them; and
- Update their CEMs to contain the required disclosure information.

For further information, please contact Linda J. Godel at 416 643 8809 or lgodel@torkinmanes.com.

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