



CASL Update: Coming into Force July 1, 2014

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In 2010, Parliament passed *Canada's Anti-Spam Legislation* ("CASL"). Its purpose was to limit the inconvenience and damage of unsolicited e-mails, or "spam". In general, CASL prohibits sending "commercial electronic messages" ("CEMs") unless the recipient has provided his/her prior consent and the CEM satisfies certain requirements for form and content, including an "unsubscribe" mechanism. In December 2013, the federal government released long-awaited regulations and announced that most of CASL would come into force on July 1, 2014.

The government has always recognized that certain types of CEMs should be exempt from the requirements and prohibitions of CASL. Some exceptions are set out in CASL itself. Others are now contained in the newly released regulations ("*IC Regulations*"). For charities, there is an exception for CEMs that:

- "are sent by or on behalf of a **registered charity** as defined in subsection 248(1) of *the Income Tax Act*"["**ITA**"]; and
- the "message has as its **primary purpose raising funds** for that charity." [Emphasis added.]

While a CEM may contain other contents, it will only benefit from this exception if its "primary purpose" is fund-raising.

Where this exception is not available, charities and other not-for-profits ("**NFPs**") should consider

additional exceptions in the *IC Regulations*, each of which has preconditions:

- **business to business** CEMs, sent within an organization or between organizations that have a relationship;
- CEMs sent in **response to a request, inquiry or complaint** or are otherwise solicited by the recipient; and
- CEMs that are sent in connection with **legal rights**.

Organizations should also consider exceptions in CASL itself, such as where there is a "**personal or family relationship**". These terms have now been defined in the *IC Regulations*.

CASL also specifies circumstances where consent to receive CEMs may be implied, such as where there is an "**existing business relationship**" or an "existing non-business relationship." An "existing business relationship" may arise from a purchase made within the prior two-year period, or from an inquiry or application made within the prior six months.

An "**existing non-business relationship**" may arise from a donation or gift made to, or volunteer work performed for, an ITA-registered charity within the prior two-years or from membership in a club, association or voluntary organization (as defined using the language of the ITA), during the prior two-years.

Where an exception or an implied consent is relied upon, organizations should retain relevant records,

including evidence of an applicable time frame, since CASL imposes a burden of proving that consent was provided or that an exception or implied consent exists.

Now that the *IC Regulations* have been released and that most of CASL will be coming into force on July 1, 2014, organizations should review the categories of e-mail that they send and consider whether they can rely on any of the available exceptions.

For advice about CASL, please contact Carol Anne O'Brien, Linda J. Godel or another member of our Not-for-Profit and Charities Group.

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