

## What you need to know about Canada's Anti-Spam Legislation

Canada's Anti-Spam Legislation, or "CASL" as it is commonly known, regulates the sending of commercial electronic messages, or "CEMs", and comes into force on July 1, 2014. The term "commercial electronic message" is defined broadly under CASL and includes any electronic message that encourages participation in a commercial activity, regardless of whether there is an expectation of profit. When considering whether an electronic message is a CEM, it is necessary to consider the content of the message, hyperlinks contained in the message which link to content on a website or other databases and the contact information contained in the message.

CASL is among the toughest anti-spam laws in the world since it uses a broad definition of CEM and requires the sender of a CEM to either have the consent of the recipient, which can be express or implied, or fit within one of the exemptions in CASL. CASL provides for significant fines for individuals (up to \$1 million) and businesses (up to \$10 million) who violate its provisions. Officers and directors of companies that violate CASL may be personally liable for those violations. Also, there is currently a private right of action scheduled to become effective on July 1, 2017, which means businesses could be faced with class action lawsuits relating to breaches of CASL.

It is very important for businesses to ensure that they are CASL compliant before July 1, 2014. Here are some tips to assist in that regard.

1. You should become familiar with the provisions of CASL. There are lots of resources online including our [February 2013 Knowledge Bytes](#) article and <http://www.fightspam.gc.ca>, which was set up by the Government of Canada to help businesses and individuals become CASL compliant.
2. You should get as many express consents as possible before July 1, 2014. Many companies are emailing their current subscriber lists and obtaining a new express consent from each subscriber. The onus is on senders to prove they have the consent of recipients and most subscriber databases are not sufficient to establish the recipients' consent. After July 1, 2014, any email asking for consent is deemed to be a CEM. In other words, you must have the recipients' consent to ask them for consent.
3. In the absence of express consent you should review the situations where implied consent or an exemption may apply to the CEM's you intend to send.
4. In addition to obtaining the recipients' consent, you must ensure that all CEMs you send comply with all formalities required under CASL, including supplying information regarding the sender and attaching a functional unsubscribe mechanism.
5. You should review and revise your marketing, advertising and external electronic mailing communication practices to ensure they comply with CASL and the CASL-amended PIPEDA and Competition Act. For example, there is guidance on how to obtain express consent under CASL. Establishing formal policies and procedures will be helpful should it be necessary to rely on a due diligence defence, which is permitted under CASL.

Clark Wilson LLP can assist you in setting up these policies and procedures as well as answer any questions regarding CASL. Please contact [Victor Dudas](#) at 604.891.7786 or [vzd@cwilson.com](mailto:vzd@cwilson.com).