

## Canada's Anti-Spam Law

Canada's Anti-Spam Law<sup>1</sup> (CASL) is coming into force on **July 1, 2014**.

### **What is CASL?**

The Act's purpose is to regulate conduct that:

- (a) Impairs the availability, reliability, efficiency and optimal use of electronic means to carry out commercial activities;
- (b) Imposes additional costs on businesses and consumers;
- (c) Compromises privacy and the security of confidential information; and
- (d) Undermines the confidence of Canadians in the use of electronic means of communication to carry out their commercial activities in Canada and abroad

### **Who does CASL apply to?**

CASL applies to all individuals and corporations in Canada who engage in commercial electronic activities. Post-secondary institutions, charities and non-profit organizations are not exempt from CASL. Likewise, the activities of student clubs, alumni associations, and foundations may also be impacted by this new legislation.

CASL may impact how your organization recruits for its programs, advertises its services or products, conducts fundraising activities or communicates with service providers, students, stakeholders and alumni.

### **What activities are regulated?**

CASL deals with 3 types of activities.

1. Alteration of transmission data so that a message will be delivered to a different destination (phishing);
2. Installation of computer programs without the express consent of the computer owner (malware, spyware, etc.); and
3. Sending of commercial electronic messages (CEM's).

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<sup>1</sup> *The Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying Out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, S.C. 2010, c. 23. Two Regulations have also been passed under this Act.

The provisions in the Act relating to CEM's will likely have the greatest impact on the post-secondary sector.

### **What is a CEM?**

A CEM is *an electronic message* where it is reasonable to conclude has as *its purpose*, or one of its purposes, *to encourage participation in a commercial activity* based on the content of the message, the hyperlinks in the message or the contact information contained in the message.

*Electronic messages* are messages sent by any means of telecommunications, including text, sound, voice or image message. This includes e-mails, text messages, electronic bulletins, advertisements, social media, etc. CASL does not apply to telephone voice recordings, facsimile to a telephone account or interactive two-way voice communication between individuals.

*Commercial activities* are defined broadly in CASL and include offers to purchase or sell a good or services, as well as advertising or promotion of these activities, even if the activities are done without the expectation of profit.

A person who sends a CEM must ensure that they, in accordance with the requirements of the Act:

- (a) have **content** identifying themselves in the CEM;
- (b) have the **express consent** of the individual to whom the CEM is sent (unless the provisions relating to implied consent are met<sup>2</sup>); and
- (c) include an **unsubscribe** mechanism in the CEM.

### **Why is understanding CASL important for me, and for my organization?**

The penalties under the Act are significant. Breaches of the Act can result in administrative penalties of up to \$1 million for individuals, and up to \$10 million for corporations.

The Act also permits persons affected by a prohibited act to bring a private right of action (in force on July 1, 2017). A Court may award compensation to that person for actual loss, damages and expenses as well as order extensive awards (from a minimum of \$200 to a maximum of \$1 million for each day a contravention occurred).

Liability can result if you aid, induce or procure a prohibited act.

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<sup>2</sup> CASL and the Regulations under it contain numerous provisions detailing the circumstances when implied consent may be relied upon. Many of the conditions are time limited (i.e. that implied consent may be relied on for 6 months or 2 years since the last communication between the parties) and require a pre-existing relationship between the sender of the CEM and the recipient. In addition, if the recipient has indicated that they no longer wish to receive CEM's, implied consent cannot be relied upon.

Officers, directors and agents may be liable if they direct, authorize, assent to, acquiesce in or participate in the commission of the prohibited act. Senders are also liable for the acts of their employees, if the employee was acting within the scope of their authority.

**What should I do?**

Contact your legal counsel now for advice on CASL and the steps to take to review your electronic communication practices so that your organization can be compliant by **July 1, 2014**.

Further information on CASL is also available through the Government of Canada website <http://www.crtc.gc.ca/eng/casl-lcap.htm>