

## CASL Deadlines - Important Legal Changes Coming Into Effect on July 1, 2017

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On July 1, 2017, the final two stages of Canada's Anti-Spam Legislation ("CASL") will come into effect - the end of the transitional period (July 1, 2014 - July 1, 2017) and the coming into force of the private right of action.



### End of the Transitional Period

Since CASL came into effect on July 1, 2014, organizations have been operating within the transitional period to send commercial electronic messages ("CEMs")\* based on implied consent. This means that where an organization has a pre-existing business or non-business relationship with a contact any time prior to July 1, 2014, there exists implied consent to send the contact a CEM. Organizations have been using the transitional period to obtain express consent from contacts to send CEMs.

On July 1, 2017, the transitional period will end and sending CEMs based on implied consent will be subject to the limitation period of 2 years or 6 months. This creates a more restrictive time within which to send a CEM to a contact based on implied consent. With 2 months remaining in the transitional period, organizations should continue to use this time to obtain express consent.

### Private Right of Action

On July 1, 2017, individuals and businesses who are affected by contraventions of CASL will have the ability to seek monetary remedy in a court proceeding. In the case of a breach of the CEM provisions, the liability can be \$200 for each breach not exceeding \$1,000,000 for each day on which the breach occurred. CASL does not expressly include class actions but it is anticipated that the private right of action creates the possibility for groups to pursue class actions for CASL violations.

For more information on these upcoming changes and how you can ensure your organization complies with CASL, contact Catherine Hamilton.

*\*What is a commercial electronic message (CEM)? According to the Canadian Radio-television and Telecommunications Commission (CRTC) website <http://crtc.gc.ca>:*

*“A key question to ask yourself is the following: Is the message I am sending a CEM? Is one of the purposes to encourage the recipient to participate in commercial activity?”*

*When determining whether a purpose is to encourage participation in commercial activity, some parts of the message to look at are:*

- *the content of the message*
- *any hyperlinks in the message to website content or a database, and*
- *contact information in the message.*

*These parts of the message are not determinative. For example, the simple inclusion of a logo, a hyperlink or contact information in an email signature does not necessarily make an email a CEM. Conversely, a tagline in a message that promotes a product or service that encourages the recipient to purchase that product or service would make the message a CEM.*

*Some examples of CEMs include:*

- *offers to purchase, sell, barter or lease a product, goods, a service, land or an interest or right in land;*
- *offers to provide a business, investment or gaming opportunity;*
- *promoting a person, including the public image of a person, as being a person who does anything referred to above, or who intends to do so.”*

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