



TOP 10 IMPACTS CASL WILL HAVE ON YOUR ORGANIZATION

On July 1, 2014, Canada's anti-spam legislation ("CASL") came into force. CASL is one of the toughest anti-spam laws of its kind in the world and has the potential to significantly impact any individual or organization that e-mails, texts, messages or communicates electronically with a recipient, whether they are an organization or an individual.

One of the big questions being asked is "How does CASL impact my organization".

1. **CASL requires you to scrutinize every e-mail and electronic message your organization sends to examine whether each message is compliant with CASL.**

The threshold issue is whether the electronic message you are sending is a "commercial electronic message" ("CEM"). CASL does not apply to specific industries or types of organizations. "Does CASL apply to me?" is the wrong question. Instead, ask yourself, "Does this electronic message that I am sending comply with CASL?" You will need to ask this question for every electronic message that you or your organization send.

2. **CASL requires you to modify your IT systems to assist with compliance.**

CASL requires that all CEMs:

- (i) have the consent of the recipient to receipt of the message;
- (ii) contain information identifying the sender and their contact information;
- (iii) contain an unsubscribe mechanism.

Under CASL, the onus of proving sufficient consent rests with the sender of the CEM. Your IT department will need to track consent, archive how the consent was obtained, and enable your unsubscribe mechanism to ensure an unsubscribe request is honoured within 10 days.

3. **CASL makes it imperative that you take due diligence steps including training for staff, enhanced record keeping, revising and updating documentation.**

CASL contains a specific defence which states, "A person must not be found liable for a violation if they establish that they exercised due diligence to prevent the commission of the violation".

4. **CASL limits who you can contact electronically from your existing contacts.**

Do you send personal e-mails from your work e-mail account? CASL does not apply only to the obvious commercial message. If your e-mail signature contains a hyperlink to your organization's website or includes your business name, then every e-mail you send may be caught by CASL.

5. **CASL will require you to revise all of your contracts and agreements to include a CASL consent.**

Do not rely on previous consent – get a new consent. Even where you have received consent in the past from your contacts, if you do not have a copy of the consent then it is no longer valid now that CASL is in force.

6. **An e-mail asking for consent is considered SPAM.**

Now that CASL is in force, it is an offence to request express consent by sending an electronic message to a recipient with whom you *do not have* an existing business or non-business relationship. Therefore, before you can send an electronic message, even one merely asking for consent, you will first need to receive consent.

7. **CASL prevents any type of "cold-call" e-mail marketing.**

CASL defines a "commercial activity" as any transaction or regular course of conduct **whether or not it is done in the expectation of profit**. Your message does not need to offer your product or service for sale - it only needs to market your organization and this is enough to turn your electronic message into a CEM.

8. **CASL imposes advertising standards on e-mail marketing.**

Just as we have standards for advertising on TV and radio – we now have standards for marketing on the Internet. These provisions are set out in the *Competition Act*.

9. **CASL will force you to return to the phone calls, faxes and Canada Post in cases where you are prohibited from contacting people electronically.**

CASL contains a specific exemption for interactive two-way communication, faxes and voice recordings sent to a telephone account. CASL also does not apply to regular postal mail. You can still promote or advertise your organization through these means.

10. **CASL imposes vicarious liability on corporations for acts of their employees and D&O liability on officers and directors for corporate violations.**

It is imperative that you educate yourself and your employees about the requirements of CASL, do your due diligence and come up with a plan to ensure compliance. All it takes is one violation and you, as an officer or director of your company, could be personally liable for the violations of your company and/or its employees.

How can you ensure that you are in compliance with CASL?

Three words - **CONSENT, INFORMATION & UNSUBSCRIBE.**

***This is a brief summary of complex legislation and should not be construed as legal advice.
Please contact Troy Baril for assistance at 306.667.5630 or at tbaril@millerthomson.com***