

June 8, 2017

Canada's Anti-Spam Legislation: Update:
Private Right of Action Will Not Come Into Force on July 1, 2017

When *Canada's Anti-Spam Legislation* (CASL) was enacted, it was intended to come into force in a number of stages, beginning on July 1, 2014. In the final stage, July 1, 2017 was to be the date that individuals "affected" by a CASL breach would have a "private right of action". These provisions permitted statutory damages of to \$1 million per day for each "contravention."

In response to serious concerns expressed by business groups and others, the government has announced that these provisions will not now come into force on July 1, 2017. In its June 7, 2017 press release¹ the government stated that while Canadians deserve an effective law that protects them from spam, businesses, charities and non-profit groups "should not have to bear the burden of unnecessary red tape and costs to comply with the legislation".

In addition to suspending the coming into force of the private right of action, the government is sending CASL as a whole to a parliamentary committee for review. This may result in additional changes to CASL, in the future.

Note that July 1, 2017 is also the end of the three-year transitional period for implied consents, based on an "existing business relationship" that was formed before July 1, 2014. There is no change with respect to that provision. This means that before sending commercial electronic messages ("CEMs"), businesses should now have obtained express consents, or have an existing business relationship that has continued and remained in place not less than two years before the CEM is sent, or otherwise be able to rely on another type of implied consent.

¹ Available at: https://www.canada.ca/en/innovation-science-economic-development/news/2017/06/government_of_canadasuspendslawsuitprovisioninanti-spamlegislati.html

Please address any questions about CASL or any other advertising and marketing matters to Carol Anne O'Brien at caob@caobrienlaw.com, or (416) 640-7270.

Carol Anne O'Brien's law practice is focused on regulatory matters including communications law (broadcasting and telecommunications), competition law, advertising and marketing, Internet domain names and privacy.