



LAPOINTE ROSENSTEIN  
MARCHAND MELANÇON  
L.L.P. Attorneys

# Newsletter

## Commercial Law

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### CASL: End of transition period for implicit consents



*M<sup>re</sup> Nancy Cleman*



*M<sup>re</sup> Vinay Desai*

Canada's Anti-Spam Legislation ("CASL") came into force on July 1, 2014. On July 1, 2017, the three-year transition period of implied consent for commercial electronic messages ("CEMs") will end.

#### Background note on CASL

CASL is intended to protect Canadians from receiving unsolicited CEMs and from the unwanted installation of computer programs and software on their electronic devices. E-mails, SMS text messages, instant messages and private messages on all social media accounts (all CEMs), which encourage participation in a commercial activity, **may not be sent without the recipient's consent, which must be obtained either explicitly (based on a prescribed form of consent request) or implicitly (through very limited circumstances)**. Consent is also required for the installation of computer programs where either the device or the installer is located in Canada.

When it came into force in 2014, CASL provided for a transitional period of three years during which consent to receive CEMs was implied in situations where the sender and the recipient had, at any time prior, a pre-existing business or non-business relationship and the relationship included the communication of CEMs. An existing business relationship most commonly arises through the purchase of goods and services. This transition rule provided senders a three-year period in which to collect express consent where the business or non-business relationship was not continuing.

#### End of transition period

On July 1, 2017 the three-year transition period for implied consent in connection with pre-existing relationships expires. In practical terms, organizations may no longer send CEMs to recipients (including customers or potential customers) unless they have acquired their express consent or they have had an existing business or non-business relationship during the transition period. It is important to note that these new implied consents are valid for a specific time period (either two years or

six months) and express consents are valid unless specifically withdrawn.

The end of the transition period means that organizations should review their mailing list to target soon-expiring implied consents and attempt to convert them to express consents (i.e. by sending CEMs requesting express consent based on implied consents). Businesses should also take this opportunity to review their internal policies and procedures to ensure they comply with CASL and other legislative requirements in order to mitigate the risks of regulatory enforcement and other recourses. Organizations should establish proper record-keeping of consents (whether implied or express) and particularly how and when consent was obtained. Organizations are also encouraged to train employees and third parties who issue CEMs on their behalf and ensure that CEMs, where applicable, contain an unsubscribe function.

Note that CASL provisions on the private right of action were scheduled to come into effect on July 1, 2017, however the Canadian Federal Government announced that they have been suspended until further notice. There is currently no indication as to when discussions on the coming into force of those provisions will resume.

**The content of this newsletter is intended to provide general commentary only and should not be relied upon as legal advice.**

**Should you have any questions regarding compliance with these new requirements, please do not hesitate to contact:**

**Marissa Carnevale**  
514 925-6324  
marissa.carnevale@lrmm.com

**Nancy Cleman**  
514 925-6374  
nancy.cleman@lrmm.com

**Vinay Desai**  
514 925-6330  
vinay.desai@lrmm.com