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CRTC Issues First Notice of Violation under Canada's Anti-Spam Legislation

On March 5, 2015, the Canadian Radio-television and Telecommunications Commission (the "CRTC") issued a Notice of Violation¹ against Compu-Finder, a Quebec-based corporate training company, ordering Compu-Finder to pay a penalty of \$1.1 million for four alleged violations of Canada's Anti-Spam Law² ("CASL"). This is the first time that the CRTC has attempted to impose a penalty under CASL, which came into force on July 1, 2014.

According to the CRTC, between July 2 and September 16, 2014, Compu-Finder sent commercial emails without the recipients' consent and without including a properly functioning unsubscribe feature, both of which actions violated CASL.³ Compu-Finder has 30 days from the Notice of Violation to either pay the penalty, submit written representations to the CRTC, or request an alternative solution from the CRTC.

In the CRTC's News Release, Chief Compliance and Enforcement Officer, Manon Bombardier, explained that before CASL came into force, the CRTC engaged in many "outreach initiatives" to inform businesses of the impact of the new requirements under CASL, and to help them develop compliance programs. She also stated that "despite the CRTC's efforts, Compu-Finder flagrantly

violated the basic principles of the law by continuing to send unsolicited commercial electronic messages after the law came into force to email addresses it found by scouring websites."

According to the CRTC, Compu-Finder accounted for 26% of all complaints submitted to the Spam Reporting Centre for its industry sector. Compu-Finder's commercial electronic messages were sent primarily to businesses, with a view to promoting training courses in topics such as management, social media and professional development. The complaints indicated that Compu-Finder's messages did not contain offerings that were relevant to recipients.

Pursuant to the Regulations⁴ enacted under CASL, unless a business that sends a commercial electronic message to another business has a "relationship" with the receiving business, and the message "concerns the activities of the organization to which the message is sent,"⁵ consent must be obtained prior to sending the message. As we can see from the CRTC's first Notice of Violation, CASL applies and will be enforced against non-compliant business-to-business communications.

This widely publicized Notice of Violation also demonstrates that the CRTC is actively investigating complaints about violations of CASL, and will pursue enforcement.

The maximum penalty under CASL is \$1 million per violation by an individual and \$10 million per violation by a business. While penalties are established using factors outlined in CASL⁶, including the nature of the violation, any previous violations, as well as other relevant facts, the CRTC enjoys significant discretion with respect to the assessment and application of penalties. The CRTC may also impose other sanctions or issue warnings.

1. Under § 22 of Canada's Anti-Spam Law, a notice of violation is served on a person if there are reasonable grounds to believe that the person has committed a violation.

2. *An 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*, SC 2010, c 23.
3. At § 6(1)(a) and 6(2)(c).
4. *Electronic Commerce Protection Regulations*, SOR/2013-221.
5. *Ibid*, § 3(a)(ii).
6. At § 20.

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

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