

## McCarthy Tétrault's Anti-Spam Toolkit

Canada's new anti-spam law (CASL) is expected to come into force in early 2012. Once in force, Canada will have one of the toughest anti-spam laws in the world. Every business that sends commercial electronic messages to Canadians will need to implement significant changes to the way it electronically communicates with customers and potential customers.

McCarthy Tétrault LLP has produced the McCarthy Tétrault *Anti-Spam Toolkit* that canvasses CASL's requirements and explains in clear terms the steps that businesses will need to consider as they prepare for the new law. The 25-page *Anti-Spam Toolkit* is available upon request from any of the following:

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## About CASL

*The Gazette* recently reported, "Businesses that rely on email for communicating with their customers will have to make major adjustments when the new anti-spam law comes into effect, probably this year."<sup>1</sup>

CASL's reach extends far beyond what would typically be considered "spam" emails, potentially applying to what businesses would consider to be ordinary electronic communications. Businesses will need to carefully scrutinize their use of email, SMS, social networks and other communications. The simple act of sending an electronic message with any degree of commercial intent to someone who has not consented to receiving that message can now present significant risks and liabilities for entities doing business in Canada. For more detail on the challenges of complying with CASL, see [Fixing CASL: Comments on the Draft CRTC and Industry Canada Regulations](#).

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<sup>1</sup> Magder, Jason, "New anti-spam law 'good news' for public",  
<http://www.montrealgazette.com/anti+spam+good+news+public/5330741/story.html>

Even if a business has recently engaged in a full privacy compliance program, the privacy compliance process will not be enough. CASL imposes additional and different requirements that will require businesses to amend the way they obtain consents to send commercial electronic messages. They will also have to develop new mechanisms to comply with the new information disclosure and unsubscribe requirements.

In addition, CASL will

- require that all commercial electronic messages must identify the sender, include the sender's contact information, and provide an unsubscribe mechanism so that the recipient can opt out of receiving future communications
- amend the *Competition Act* to prohibit false or misleading representations in the sender description, subject matter field or message field of an electronic message, in the URL or other locator on a webpage. Senders will have to be particularly wary of making overly boastful statements in subject matter lines in an attempt to catch readers' attention. The law also includes amendments to federal privacy legislation that are reviewed in the *Anti-Spam Toolkit*.
- create a private right of action that could allow, in certain cases, a person to take civil action against anyone who violates CASL or the new false or misleading representations provisions of the *Competition Act*. The potential remedies could amount to as much as \$1 million per day.

Individuals who violate CASL could face fines of up to \$1 million and violating organizations could face fines of up to \$10 million. Officers and directors could also be held liable if they directed, authorized, acquiesced to or participated in the offending conduct.

## About the Toolkit

McCarthy Tétrault's *Anti-Spam Toolkit* will be helpful to businesses that communicate electronically with customers and wish to address the new requirements in CASL. It sets out in clear language the key elements of CASL, and discusses important compliance-related activities, including the following:

- sending commercial electronic messages to customers and other outside parties
- obtaining consents to send commercial electronic messages
- formatting commercial electronic messages to meet CASL requirements
- updating enterprise messaging systems to comply with CASL
- avoiding the use of false or misleading statements in electronic communications
- working with third parties in electronic and marketing initiatives
- technical measures that businesses should be examining
- remedies, penalties and private rights of action in CASL

The *Anti-Spam Toolkit* also contains a questionnaire that can help businesses start their internal review process for CASL compliance, and a checklist that covers the key points of compliance that companies will have to consider.