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Suspension of Private Relief: CASL's Private Right of Action Delayed

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Since its implementation in July 2014, Canada's anti-spam law, or CASL, has continued to generate a fair amount of controversy due to its broad application and the availability of significant administrative monetary penalties. As we described in prior publications (*The Other Shoe Drops: The Private Right of Action Under CASL*; *Watch This (Email) Space: New Private Right of Action for Misleading Representations*), one of the most controversial aspects of CASL – the private right of action contemplated under sections 47 to 51 of CASL – was scheduled to come into force on July 1, 2017. Earlier this week, however, the Canadian government announced the suspension of the implementation of these provisions pending a Parliamentary review of CASL.

As discussed further below, while businesses may take some solace from the federal government's announcement, it remains to be seen whether the Parliamentary committee tasked with reviewing CASL will recommend amendments to these provisions or a complete abandonment of this private right of action under CASL.

What Are the Private Right of Action Provisions?

These private right of action provisions would allow individuals and corporations, either individually or as a class, to apply to a court to obtain compensation for violations of CASL, certain provisions of the *Personal Information Protection and Electronic Documents Act* and certain provisions of the *Competition Act*. Under these private right of action provisions, plaintiffs can seek recovery of actual loss or damage as well as up to \$200 per occurrence, to a maximum of \$1 million per day for violation of CASL's requirements relating to commercial electronic messages, and up to \$1 million per day for violations of other CASL provisions (e.g., the prohibition against installing computer programs without consent).

Why Were the Provisions Suspended?

The federal government's news release stated that the decision to suspend the private right of action was "in response to broad-based concerns raised by businesses, charities and the not-for-profit sector." Numerous stakeholders, including The Canadian Chamber of Commerce and the [Canadian Bar Association](#) had publicly expressed concerns about the significant burden and disproportionate impact that the private right of action provisions would have, and recommended that implementation be delayed until after the statutory review of CASL has been completed. The federal government further stated that it "supports a balanced approach that protects the interests of consumers while eliminating any unintended consequences for organizations that have legitimate reasons for communicating electronically with Canadians," thereby signalling that concerns raised regarding the burdens and costs of CASL compliance may, in fact, lead to amendments to CASL.

What's Next?

The implementing legislation states that CASL is subject to Parliamentary review three years after CASL comes into force, which was on July 1, 2014. Accordingly, this review should begin this summer.

It remains to be seen what steps the Parliamentary committee will recommend and the federal government will take in the future, but in the interim, enforcement of CASL will remain in the exclusive domain of the federal authorities.

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