

# Canada's Anti-Spam Legislation – 2021 Year in Review

In 2021, the Supreme Court of Canada refused to hear a challenge to the constitutional validity of Canada's Anti-Spam Legislation (commonly known as "CASL"), and the Canadian Radio-television and Telecommunications Commission issued two CASL enforcement decisions.

## CASL

CASL creates a comprehensive regime of offences, enforcement mechanisms and potentially severe penalties designed to prohibit the sending of unsolicited commercial electronic messages (CEMs), the unauthorized commercial installation and use of computer programs on another person's computer system and other forms of online fraud. Following are some key aspects of CASL:

- CASL creates an opt-in regime that prohibits, subject to limited exceptions, the sending of a CEM unless the recipient has given consent (express or implied in limited circumstances) to receive the CEM and the CEM complies with prescribed formalities (e.g., information about the sender and an effective and promptly implemented unsubscribe mechanism).
- CASL also prohibits, subject to limited exceptions, the installation and use of a computer program on another person's computer system, in the course of a commercial activity, without the express consent of the owner or authorized user of the computer system.
- CASL imposes liability on organizations and individuals (including corporate directors and officers) for direct and indirect/vicarious CASL violations. CASL provides a due diligence defence.

- CASL violations can result in regulatory penalties of up to \$10 million per violation for an organization and \$1 million per violation for an individual. CASL includes a private right of action that is not in force.

The Canadian Radio-television and Telecommunications Commission (CRTC) enforces CASL's rules regarding CEMs and computer programs. Since CASL came into force in 2014, the CRTC has taken enforcement action against organizations and individuals who have violated CASL and issued enforcement decisions and accepted voluntary undertakings (settlements).

## Supreme Court of Canada decision – CompuFinder appeal

In March 2021, the Supreme Court of Canada declined to hear an appeal by CompuFinder from a Federal Court of Appeal decision confirming the constitutional validity of CASL and providing important guidance regarding the interpretation of CASL's rules for sending CEMs. ([more information](#))

## CRTC enforcement

In March 2021, the CRTC [announced](#) and published a [notice of violation](#) imposing a \$75,000 penalty on an individual for conducting high-volume spam campaigns without consent in violation of CASL's CEM rules. The \$75,000 penalty is the largest penalty imposed to date on an individual spammer.

In December 2021, the CRTC [announced](#) and published an [undertaking](#) by an international retailer to voluntarily settle alleged CASL violations regarding the sending of

promotional emails without consent and in some instances without a CASL-compliant unsubscribe mechanism. As part of the undertaking, the retailer agreed to pay a \$200,000 penalty and implement a CASL compliance program.

For more information about CASL, see BLG bulletins [CASL – Year in Review 2020](#), [CASL – Year in Review 2019](#), [CASL – Year in Review 2018](#), [CASL – Year in Review 2017](#), [CASL – Year in Review 2016](#) and [CASL – Year in Review 2015](#). ■

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BLG's national Compliance with Privacy and Data Protection group includes lawyers, located in BLG's offices across Canada, with expertise in CASL, privacy law, cyber risk management and class action litigation. We provide both proactive CASL compliance advice and legal advice to help respond to a CASL contravention. Additional information about BLG's national Compliance with Privacy and Data Protection group and our services is [available here](#).

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