

## Settlement of Alleged CASL Violation – Text Messages Sent Without Consent or Prescribed Information

On May 1, 2018, the Canadian Radio-television and Tele-communications Commission announced that the companies operating the 514-BILLETS ticket resale business agreed to pay \$100,000 as part of a voluntary settlement of alleged violations of *Canada's Anti-Spam Legislation* (commonly known as "CASL") regarding the sending of text messages without the recipient's consent and without prescribed information about the message sender. The undertaking is the first settlement of an investigation regarding the sending of text messages to mobile devices.

### CASL

CASL creates a comprehensive regime of offences, enforcement mechanisms and potentially severe penalties designed to prohibit unsolicited or misleading 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.

For most organizations, the key parts of CASL are the rules for CEMs. Subject to limited exceptions, CASL creates an opt-in regime that prohibits 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) and is not misleading. An electronic message sent to request consent to receive future CEMs is deemed a CEM, and must comply with CASL requirements.

CASL violations can result in potentially severe administrative monetary penalties – up to \$10 million per violation for an organization and \$1 million per violation for an individual – in regulatory enforcement proceedings. CASL includes a private right of action, which is not in force. For more information, see BLG bulletin *CASL – Government Suspends Private Right of Action*.

The Canadian Radio-television and Telecommunications Commission (the "CRTC") is responsible for enforcing CASL's CEM rules, and has various enforcement tools for that purpose. Since CASL came into force in 2014, the CRTC has taken enforcement action against organizations and individuals who have violated CASL's CEM rules, and has issued enforcement decisions and accepted voluntary undertakings (settlements). For more information, see BLG bulletins *CASL – Year in Review 2017*, *CASL – Year in Review 2016* and *CASL – Year in Review 2015*.

In December 2017, the House of Commons Standing Committee on Industry, Science and Technology issued a report titled *Canada's Anti-Spam Legislation: Clarifications are in Order*, which recommends some changes to CASL. In April 2018, the government released an [official response](#) to the report. For more information, see BLG bulletin *New Committee Report on CASL Highlights Need for Clarification and Education*.

### The Investigation and Settlement

According to CRTC's [News Release](#) and the filed [Undertaking](#), the companies 9118-9076 QUÉBEC INC. and 9310-6359 QUÉBEC INC., both operating as 514-BILLETS, whose main business activity is ticket resale for sporting and cultural events, allegedly sent, or caused or permitted to be sent, text messages in violation of CASL's CEM rules. Most of the text messages were requests for consent to receive future commercial offers, including discounts. In response to complaints to the [Spam Reporting Centre](#), CRTC launched an investigation.

The text messages allegedly violated CASL prohibitions against sending CEMs without the recipient's consent and without prescribed information (set out in the CRTC [Electronic Commerce Protection Regulations](#)) identifying the CEM sender and enabling the recipient to readily contact the sender. In addition, the text messages that requested consent to receive future CEMs failed to include or provide hyperlink access to prescribed information that must be included in a request for express consent to receive CEMs.

In March 2018, the companies operating as 514-BILLETS voluntarily entered into an undertaking with the CRTC to resolve all CASL violations. The undertaking requires the companies to jointly pay \$100,000 in compensation for the alleged CASL violations. The companies paid \$25,000 to the Receiver General for Canada and agreed to pay \$75,000 to 514-BILLETS customers in the form of 7,500 discount coupons with a \$10 value each. The undertaking also requires the companies to establish a CASL compliance program and appoint an officer responsible for organizational compliance. The compliance program includes: (1) review and revision of current compliance practices; (2) development and implementation of corporate policies and procedures designed to ensure compliance with CASL; (3) employee training; (4) implementation of adequate disciplinary measures in the event of non-compliance with internal procedures; (5) establishment of a thorough complaint monitoring and resolution structure regarding CEMs; and (6) other monitoring and audit measures.

The CRTC's News Release notes that this is the first undertaking relating to text messages sent to mobile devices in violation of CASL's CEM rules. The News Release emphasizes that regulated CEMs include "any message sent to an email account, a telephone account or an instant messaging account with the purpose of encouraging participation in a commercial activity", and reminds that organizations "that promote their products and services need to comply with the CASL, which applies to any form of commercial electronic message". The News Release encourages Canadians to report spam to the Spam Reporting Centre.

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### Comment

CASL might be amended in the future to address concerns identified during the recent statutory review process. In the meantime, however, CASL is subject to regulatory enforcement, which can involve time-consuming and costly investigations and proceedings and result in potentially significant financial penalties.

There are a number of important steps that an organization might take to enhance its CASL compliance and mitigate the risks of regulatory enforcement, including: (1) establish/update its CASL compliance program; (2) verify its due diligence documentation; and (3) establish/update its CASL complaint/litigation response plan. For more information, see BLG bulletins *Canada's Anti-Spam Legislation – Regulatory Guidance, CASL Compliance Programs – Preparing for Litigation* and *Preparing for CASL's Private Right of Action*.

Organizations should also be mindful that Canadian privacy laws regulate the collection, use and disclosure of certain kinds of personal information used to send CEMs. Accordingly, organizations should ensure that their marketing activities comply with both CASL and applicable privacy laws. For more information see BLG bulletin *Canadian Privacy Commissioner Issues Guidance for Privacy Law and CASL Compliance*. ■

BLG's national CASL 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 CASL Group and our services is available at [blg.com/CASL](http://blg.com/CASL).

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