

Canadian government suspends CASL private right of action

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The Canadian federal government has announced that it has suspended the coming into force of the private right of action under Canada's anti-spam legislation (CASL), originally scheduled to come into force on July 1, 2017.

This development will undoubtedly be welcomed by many businesses and other organizations inside and outside of Canada that use email or other electronic messaging to keep in touch with Canadian customers and other Canadian residents.

As we have previously written, under the private right of action, organizations (as well as their officers, directors and agents) could be sued by anyone claiming to have been "affected" by an act or omission that violated CASL. Plaintiffs could claim both compensatory damages (for any actual losses or damages they may have suffered) as well as statutory damages, which in some circumstances could be up to \$1 million per day, even where no actual harm was proven.

In light of the complexity of complying with CASL and the significant statutory damages available under the private right of action, many businesses and other organizations were deeply concerned that the private right of action would lead to a cottage industry of class actions for non-compliance with CASL. The suspension of the private right of action removes the immediate risk of these class actions and other private litigation.

The government's announcement does not indicate if or when the private right of action may take effect in the future, but it does note that a parliamentary committee will be asked to review CASL.

Although the private right of action has been suspended, other provisions of CASL remain in force and are subject to enforcement by the CRTC and other regulators.

We will be discussing this and other related CASL developments at our upcoming AccessPrivacy conference on June 21, where we will be having a "Fireside CASL Chat" with legal counsel to the CRTC.