

Canada's New Anti-Spam Legislation The Fundraising Exemption

June 30, 2014

CASL (Canada's new anti-spam legislation) applies to the content of electronic messages. Therefore, if a message contains commercial content, then CASL will apply to that message. In this case, the organization intending to send the message must (i) find either a partial or full exemption to the consent and content requirements of CASL, (ii) have either a business or non-business relationship that will permit the sending of the message, or (iii) comply with CASL.

CASL does provide an exemption from both the consent and content requirements found in section 6 of the legislation for registered charities (and political organizations) if the purpose of the electronic communication is "primarily for the purpose of raising funds".

The term "primary purpose" has not been clearly defined and it remains uncertain how narrowly or how broad this term is going to be interpreted. For this reason, registered charities need to proceed with caution when reviewing their electronic messages and considering the fundraising exemption.

On June 5, 2014, Imagine Canada released an [Issue Alert](#) as well as two FAQs ([FAQ #1](#); [FAQ #2](#)) for registered charities and non-profit organizations. In the Issue Alert, Imagine Canada advised that Industry Canada (the government agency that drafted the legislation and the regulations) had confirmed that the term "primary purpose" would be interpreted fairly broadly, and that in addition to the types of fundraising activities identified by Canada Revenue Agency, additional types of activities would fall into the fundraising exemption.

However, early last week, the CRTC (the government agency responsible for enforcing the legislation, investigating complaints and handing out penalties to individuals and organizations), advised that there were some "inconsistencies" with the reported interpretation of the fundraising exemption noted in Imagine Canada's Issue Alert. The CRTC also stated that it would be some time before the CRTC issued guidelines in this regard. We refer you to the [notice published by Imagine Canada](#) on June 24, 2014:

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As a result, we are still in a state of flux on this point and as noted above, registered charities should take care in its application of the fundraising exemption.

We will continue to monitor this situation and advise on any clarifications to the fundraising exemption as they become available.

If you would like to discuss CASL and how it applies to your organization, please contact [Kim Cunnington-Taylor](mailto:kim.cunnington-taylor@nelligan.ca) at 613-231-8299 or by e-mail at kim.cunnington-taylor@nelligan.ca.

For an introductory article on CASL, please read:
<http://www.nelligan.ca/e/canadasnewantispamlegislation.cfm>